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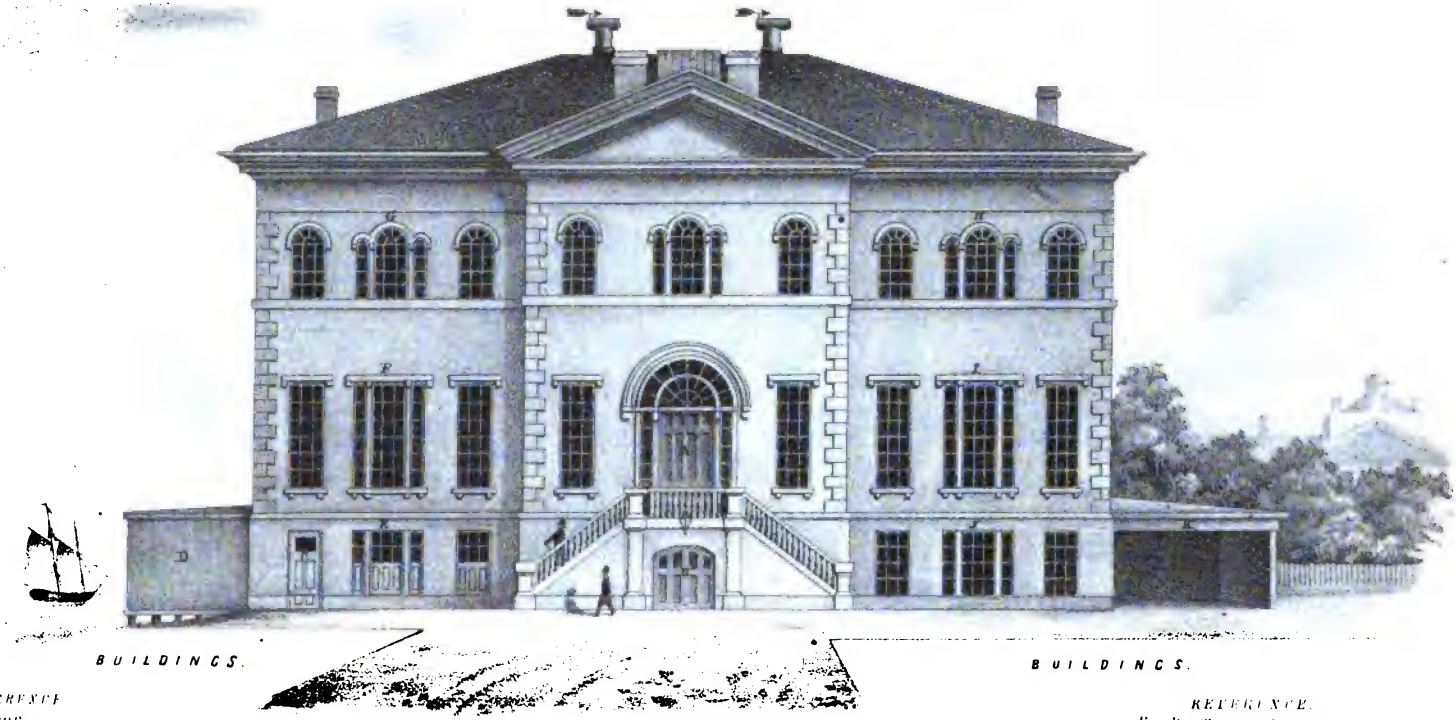

REFERENCE

A. Front Door.
B. Lower Front Door.
C. Door to Dissecting Room Entry
D. Dissecting Room
E. [illegible] in front of [illegible]

MASS. MEDICAL COLLEGE.

REFERENCE.

F. D. Wensires Lecture Room.
G. Anatomical Lecture Room.
H. Auditorial [illegible]
I. Medical Lecture Room
J. Janitors [illegible]
K. [illegible] Shed

Massachusetts. Courts: Supreme Judicial Court.

REPORT

OF THE

CASE OF JOHN W. WEBSTER,

MASTER OF ARTS AND DOCTOR OF MEDICINE OF HARVARD UNIVERSITY; MEMBER OF THE MASSACHUSETTS MEDICAL SOCIETY, OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES, OF THE LONDON GEOLOGICAL SOCIETY, AND OF THE ST. PETERSBURG MINERALOGICAL SOCIETY; AND

ERVING PROFESSOR OF CHEMISTRY AND MINERALOGY IN HARVARD UNIVERSITY;

INDICTED FOR THE

MURDER OF GEORGE PARKMAN,

MASTER OF ARTS OF HARVARD UNIVERSITY, DOCTOR OF MEDICINE OF THE UNIVERSITY OF ABERDEEN, AND MEMBER OF THE MASSACHUSETTS MEDICAL SOCIETY,

BEFORE

The Supreme Judicial Court of Massachusetts;

INCLUDING THE

HEARING ON THE PETITION FOR A WRIT OF ERROR,

THE

PRISONER'S CONFESSIONAL STATEMENTS AND APPLICATION FOR A COMMUTATION OF SENTENCE,

AND AN

APPENDIX

CONTAINING SEVERAL INTERESTING MATTERS NEVER BEFORE PUBLISHED.

BY GEORGE BEMIS, ESQ.
ONE OF THE COUNSEL IN THE CASE.

BOSTON:
CHARLES C. LITTLE AND JAMES BROWN.
1850.

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PREFACE.

THE undersigned has undertaken to present, in the accompanying volume, a complete and accurate report of the entire proceedings in the case of Professor Webster, from the time of his arrest down to the period of his execution. It was chiefly from the conviction that such a report ought to be attempted by some one familiar with the case, in view of the extraordinary sensation created by it, as well without as within the legal world, and in view of the misinformed criticism passed upon it in all its parts, more especially in reference to the conduct of the jury-trial, that the undersigned, after the ascertainment of the fact that no existing report could be pointed to as a full or reliable source of reference, and that no other person was likely to attempt it, took upon himself the task of preparing the present volume. Considering the sources of information to which he has had access and the aids of which he has been able to avail himself, he trusts that it will not be regarded as presumptuous in him to express the belief that he offers to the public an authentic and reliable account of this interesting case, in all its details. He is sure, at least, of having applied to it a diligent and anxious desire for accuracy, and of having bestowed on it an amount of labor and attention which nothing but the supposed importance of the work could justify.

In addition to the proceedings supplementary to the jury-trial, which have not till now been collected together, the present volume contains various supplementary confessions of Professor Webster to the Executive, and some admissions of his to the Sheriff and Jailer, which have never before been published. In the Appendix, also, will be found a document of curious interest, now for the first time

given to the perusal of the public,—the second "Civis" letter, referred to in the Professor's address to the jury, and which there is but little reason to doubt was written by the prisoner himself during the trial, and after the introduction of the other anonymous letters in evidence by the Government. It may serve to give a further idea of the probable interest of the present volume to the reader, to state that it contains at least *a quarter part more evidence, in compass, given at the jury-trial*, than any other report in print. Much of this additional evidence will be found under the heads of the testimony of some of the most important witnesses at the trial, particularly Dr. Keep, Prof. Wyman, Mr. Littlefield, and Mr. Clapp.

Besides the opportunity which the undersigned has enjoyed for a personal knowledge of most of the matters which he undertakes to report, he has been favored with the manuscript-notes of the judges and of the other counsel in the cause, and has had access to the original papers and sources of proof produced at the jury-trial. His Honor, the Chief Justice, has also favored him with his charge to the jury, now for the first time written out and revised with care for this publication. In reference to a statement in the preface of Messrs. Phillips, Sampson, & Co.'s phonographic report of the jury-trial, that the Chief Justice had "carefully corrected" his charge for that report, it is proper to say, that when called upon to revise it after it was in print, and preparatory to its being immediately stereotyped, he attempted to correct only some of the most obvious errors it contained, in the imperfect manner in which it was then practicable so to do.

In reference to the arguments of his associates on the jury-trial, the undersigned would say, that those gentlemen have done him the favor to revise them for the present volume; two of them never having attempted that undertaking with reference to any other report, and the Attorney General having only partially, and in a very imperfect manner, performed that office with reference to a portion of his addresses to the jury as reported in the phonographic publication just referred to.

In preparing the work, the undersigned has derived much assistance from the contemporaneous reports of the Boston and New York

daily newspapers, and also from the phonographic report of Dr. Stone, just alluded to, which, however, it is understood, did not profess to report, in that method, much if any of the evidence, but to be confined mainly to the charge of the Chief Justice, the arguments of counsel, and some of the interlocutory discussions. These contemporaneous reports have occasionally afforded valuable aid in presenting more literally the phraseology used by witnesses or speakers than that which the undersigned found upon his own manuscript-minutes or those to which he had recourse. But it is probably no unjust disparagement of these temporary transcripts of proceedings, — prepared as they were for daily publication without an opportunity for revision, and when the reporters, at their distance from the witness-stand and the bench, could not overhear all that transpired,— to say, that they do not and cannot lay claim to that completeness and accuracy of detail which ought to belong to a permanent record of such a case as this. It may serve to show how far short they all fall of completeness, that, out of the fifteen or more reports of Professor Webster's address to the jury,— probably the most striking incident of the trial, and whose fame will survive to the latest posterity as one of the extraordinary performances of which he was capable, — no one of them contains more than two thirds of the matter which the undersigned, after a careful collation of them all, or the best of them, and a comparison of the recollection of those engaged in the trial with his own, has set down as the Professor's genuine address.

The law-hearing supplementary to the jury-trial will possess some interest for the legal reader, and has never been fully reported before. The opinion of the Court was prepared by the Chief Justice himself, and kindly furnished for publication. The arguments of counsel have also been revised by their authors.

In the Appendix, besides other matters of interest not before published, the reader will find letters of acknowledgment from Professor Webster to Messrs. Merrick and Sohier, of which the undersigned was so fortunate as to discover the existence, and of which he reluctantly obtained copies from those gentlemen, just as the last sheets of the Appendix were going to press.

As a whole, the undersigned presents the volume to the public, with the hope that it will be regarded as at least a faithful endeavor to perpetuate the particulars of one of the darkest incidents in legal or human annals.

THE REPORTER.

Boston, November, 1850.

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TRIAL OF JOHN W. WEBSTER

BEFORE THE

SUPREME JUDICIAL COURT

OF MASSACHUSETTS.

HON. LEMUEL SHAW, *Chief Justice.*
HON. SAMUEL S. WILDE,
HON. CHARLES A. DEWEY,
HON. THERON METCALF, } *Associate Justices.*

Counsel for the Commonwealth.

HON. JOHN H. CLIFFORD, Attorney General.
GEORGE BEMIS, ESQ.

Counsel for the Prisoner.

HON. PLINY MERRICK.
EDWARD D. SOHIER, ESQ.

THE Grand Jury for the County of Suffolk returned into the Municipal Court of the City of Boston, held at Boston, on the 26th day of January, A. D. 1850, the following indictment:

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, TO WIT: — At the Municipal Court of the City of Boston, begun and holden at said Boston, within and for the County of Suffolk, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty:

The Jurors for the Commonwealth of Massachusetts, on their oath present:—That John W. Webster of Cambridge, in the county of Middlesex, gentleman, on the twenty-third day of November last past, at Boston, in the county of Suffolk, in and upon one George Parkman, feloniously, wilfully, and of his malice aforethought, did make an assault; and that he the

said John W. Webster, with a certain knife which he then and there in his right hand had and held, him the said George Parkman, in and upon the left side of the breast of him the said George Parkman, then and there feloniously, wilfully, and of his malice aforethought, did strike, cut, stab and thrust,—giving to the said George Parkman, then and there with the knife aforesaid, in and upon the left side of the breast of him the said George Parkman, one mortal wound of the length of one inch and of the depth of three inches; — of which said mortal wound the said George Parkman then and there instantly died.—And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said John W. Webster, him the said George Parkman, in manner and form aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did kill and murder: — against the peace and dignity of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present:— That the said John W. Webster, at Boston aforesaid, in the county aforesaid, on the twenty-third day of November last past, in and upon the said George Parkman, feloniously, wilfully, and of his malice aforethought, did make an assault; and that he, the said John W. Webster, then and there, with a certain hammer which he, the said John W. Webster, in both his hands, then and there had and held, him, the said George Parkman, in and upon the head of him, the said George Parkman, then and there feloniously, wilfully, and of his malice aforethought, did strike,—giving unto him, the said George Parkman, then and there with the hammer aforesaid, by the stroke aforesaid, in manner aforesaid, in and upon the head of him the said George Parkman, one mortal wound: — of which said mortal wound, he, the said George Parkman, then and there instantly died.—And so the Jurors aforesaid, upon their oaths aforesaid, do say, that the said John W. Webster, him, the said George Parkman, in manner and form aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did kill and murder: — against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present: — That the said John W. Webster, at Boston aforesaid, in the county aforesaid, on the twenty-third day of November last past, in and upon the body of the said George Parkman, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said John W. Webster,

then and there, with his hands and feet, him, the said George Parkman, feloniously, wilfully, and of his malice aforethought, did strike, beat, and kick, in and upon the head, breast, back, belly, sides, and other parts of the body of him, the said George Parkman, and did, then and there, feloniously, wilfully, and of his malice aforethought, cast and throw the said George Parkman, down, unto, and upon the floor, with great force and violence there,—giving unto said George Parkman, then and there, as well as by the beating, striking, and kicking of him, the said George Parkman, in manner and form aforesaid, as by the casting and throwing of him, the said George Parkman, down as aforesaid, several mortal strokes, wounds and bruises, in and upon the head, breast, back, belly, sides, and other parts of the body of him, the said George Parkman:—of which said mortal strokes, wounds and bruises, he, the said George Parkman, then and there instantly died.—And so the Jurors aforesaid, upon their oath aforesaid, do say that the said John W. Webster, him, the said George Parkman, in manner and form aforesaid, then and there, feloniously, wilfully, and of his malice aforethought, did kill and murder: —against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present: —That the said John W. Webster, at Boston aforesaid, in the county aforesaid, in a certain building known as the Medical College, there situate, on the twenty-third day of November last past, in and upon the said George Parkman, feloniously, wilfully, and of his malice aforethought, did make an assault; and him, the said George Parkman, in some way and manner, and by some means, instruments, and weapons, to the Jurors unknown, did then and there feloniously, wilfully, and of malice aforethought, deprive of life; —so that he, the said George Parkman, then and there died. —And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said John W. Webster, him, the said George Parkman, in the manner and by the means aforesaid, to them the said Jurors unknown, then and there, feloniously, wilfully, and of his malice aforethought, did kill and murder: —against the peace and dignity of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided. *A true bill.* DANIEL RHODES,

Foreman of Grand Jury.

JOHN H. CLIFFORD,

Attorney General.

On the same day, January 26th, under the direction of the presiding judge in the Municipal Court, (Chief Justice WELLS,) the clerk of the court, THOMAS W. PHILLIPS, Esq., caused a copy of an order of notice to be served on the prisoner, notifying him that this indictment would be certified, and transmitted to the Supreme Judicial Court, then in session, for Suffolk county; and at the same time, the sheriff of the county, JOSEPH EVELETH, Esq., who served the copy, also handed him a certified copy of the indictment.*

This indictment was returned into the Supreme Judicial Court on the 30th of the same January; and, on the 9th of February following, he was arraigned in that court, before Mr. Justice FLETCHER, and pleaded, Not Guilty. He was thereupon informed by the Court, that counsel would be assigned him, to assist him in his defence, either upon his own nomination or upon that of the Court. Having stated that he had already advised with the Hon. PLINY MERRICK and EDWARD D. SOHIER, Esq., and requested that they might be confirmed by the Court, those gentlemen were accordingly assigned as his counsel.

The ATTORNEY GENERAL and Mr. SOHIER being present, inquiry was made by His Honor, if either side had any wishes as to the time of trial. Mr. Sohier replying, that his client had none, and the Attorney General, that it was desirable to have it at as early a day as was practicable, the Court named the 19th of March as the time at which the Full Bench would be in session for the purpose; and that day was accordingly set down.

Tuesday, March 19th.

At nine o'clock, the Court, consisting of Chief Justice SHAW, and Associate Justices, WILDE, DEWEY, and METCALF, came in, and took their places upon the bench.†

Hon. JOHN H. CLIFFORD, Attorney General, and GEORGE

* As these preliminary proceedings were supposed to have involved an error of procedure, which afterwards gave rise to an application for a writ of error, they will be given hereafter more in detail, in connection with that application.

† By the Statutes of Massachusetts, a capital trial is required to be held before three or more of the justices of the Supreme Judicial Court. Rev. Stat. ch. 81, § 11, § 13. The preliminary arraignment may, however, take place before a single justice of that court. Rev. Stat. ch. 81, § 15. Prior to the adoption of this latter provision, it was decided by the Court, that an arraignment before a single justice vitiated the whole proceedings of a capital trial, and a prisoner, who had been so arraigned, was permitted a new trial after conviction. *Commonwealth* v. *Hardy*, 2 Mass. Rep. 303.

In the present instance, all the members of the Court attended at the trial, with the exception of Mr. Justice FLETCHER, who was otherwise occupied with official duties.

Bemis, Esq., appeared for the Commonwealth; and Hon. Pliny Merrick, and Edward D. Sohier, Esq., for the prisoner.

The prisoner having been placed at the bar, the clerk, George C. Wilde, Esq., called over the list of traverse jurors summoned for the term, sixty in number, all but four of whom were in attendance, and answered to their names.

The Court then proceeded to hear the excuses of those who had any to offer, and fifteen were excused on account of age, ill health, enrollment in the militia, &c.

The calling of the list having been completed, the Attorney General arose, and submitted the following motion:

May it please Your Honors,

"The Grand Jury for the County of Suffolk, at the last January term of the Municipal Court, found and returned an indictment against John W. Webster, for the murder of George Parkman. That indictment has been duly certified into this court. The prisoner, at a former day, was arraigned thereon, and pleaded Not Guilty. Counsel was assigned him to aid him in his defence, and this day was appointed for his trial. The prisoner and his counsel are present in court; and I now move Your Honors, that a jury be empanelled to try the issue."

The Court having directed the clerk to proceed with that duty, Mr. Wilde addressed the prisoner:

"John W. Webster. — You are now set to the bar to be tried; and these good men whom I shall call, are to pass between the Commonwealth and you, upon your trial. If you would object to any of them, you will do so as they are called, and before they are sworn. You have a right to challenge twenty of the jurors peremptorily, and as many more as you have good cause for challenging."

He then called the name of the first juror on the list.

Mr. Sohier, for the defence, moved that the statute questions, in regard to certain disqualifications of the jurors, be put to them before the prisoner should be called upon to exercise his right of challenge.

By the Chief Justice. The usual course is to be pursued. We have uniformly held, since the adoption of the Revised Statutes, that, on motion of counsel on either side, the Court would put the usual interrogatories to the jurors, to ascertain if they had formed or expressed any opinion; and also, whether they have conscientious scruples, or such opinions

on the subject of capital punishment, as to preclude them from finding a defendant guilty. If the prisoner intends to challenge peremptorily, he must exercise that right before the jurors are interrogated.*

Mr. WILDE then addressed the juror and prisoner. — "Prisoner, look upon the juror." "Juror, look upon the prisoner."

The first juror being challenged peremptorily by the prisoner, on the second being called and passed to the examination upon his statute qualifications, the Chief Justice quoted and read the provisions of the 95th chapter, 27th section of the Revised Statutes, which are as follows: — "The Court shall, on the motion of either party in any suit, examine on oath any person who is called as a juror therein, to know whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence, in support of the objection." Accompanying the reading, the judge added the explanation for the benefit of all the panel who had been summoned, that the material inquiries contemplated by the statute, as applicable to a case like the present, were, whether the juror had formed or expressed an opinion, or was sensible of any bias or prejudice in regard to it. In reference to the word "prejudice," it seemed to imply nearly the same thing as "opinion;" a *prejudgment* of the case, and not necessarily an enmity or ill-will against either party. The statute intended to exclude any person who had made up his mind, or formed a judgment in advance, no matter in favor of which side. Still, the opinion or judgment must be something more than a vague impression, formed from casual conversations with others, or from reading imperfect, abbreviated newspaper reports. It must be such an opinion upon the merits of the question, as would be likely to bias or prevent a candid judgment, upon a full hearing of the testimony. If one had formed, what in some sense might be called an opinion, but which yet fell short of exciting any bias or prejudice, he might conscientiously discharge his duty as a juror. He then referred to the indictment to inform the jurors what the nature and character of the charge against the prisoner was, which they were to be empanelled to try. They were also informed that the law looked to the forming and to the expression

* See *Commonwealth* v. *Rogers*, 7 Met. 500.

of an opinion as distinct acts, each of such a character as would be likely to influence his future judgment, incline him to maintain such opinion, and thus affect his impartiality.

The question was then proposed in this form: "Have you expressed, or have you formed any opinion upon the subject matter now to be tried; or are you sensible of any bias or prejudice therein?"

The second juror having answered, that he had both formed and expressed an opinion, in the sense explained by the Court, he was set aside, and the clerk proceeded to call the third. He having been passed by the prisoner, and answered the statute questions proposed to the former juror, in the negative, was then interrogated by the Chief Justice, — (upon the motion of the Attorney General,) — whether he had any such opinions as would preclude him from finding any defendant guilty of an offence punishable with death?

The Chief Justice, in reference to this inquiry, quoted and commented on the 6th section of the 137th chapter of the Revised Statutes: — "No person, whose opinions are such as to preclude him from finding any defendant guilty of an offence punishable with death, shall be compelled or allowed to serve as a juror, on the trial of any indictment for such an offence."

The third juror, Mr. Thomas Barrett, having answered this inquiry in the negative, the Court directed that he be sworn in chief; whereupon the clerk administered to him the following oath, prescribed by the 137th chapter, 7th section of the Revised Statutes: "You shall well and truly try, and true deliverance make, between the Commonwealth and the prisoner at the bar, whom you shall have in charge, according to your evidence; so help you, God!"

Mr. Benjamin H. Greene, (the ninth juror of the panel as finally made up,) stated in reply to the inquiry in regard to his opinion upon finding a verdict in a case punishable with death, that he was opposed to capital punishment; but that he did not think that his opinions would interfere with his doing his duty as a juror: — that as a legislator, he should be in favor of altering the law, though he believed he could execute it as a juror, as it was.

The Chief Justice, after conferring with the other judges, intimated to him that the state of his opinion was a matter which he must decide for himself; that, as he had stated it, the Court did not consider him disqualified. Mr. Greene, after some hesitation, took the oath.

After the other jurors had been sworn, and when the name

of Mr. Greene was called to take his seat upon the panel, he stated to the Court that he thought it inconsistent for him to serve as a juror, holding the opinions he did, and should prefer being left off. The Chief Justice remarked that it was a question for him to decide, whether his opinions would prevent his giving an unbiassed verdict. Mr. Greene replied that he thought he could give an unbiassed judgment; yet he had a sympathy for the prisoner and his family, and feared that his opinions in relation to capital punishment might influence others of the jury. The Court, upon conference, ruled that his case did not come within the statute, and he was not excused.

Of the whole list drawn, seven were set aside for having formed or expressed an opinion, three for having opinions against capital punishment, and fourteen were peremptorily challenged by the prisoner. Five names remained on the list when the panel was completed. The names of the jury, as finally impanelled, were,

Robert J. Byram, (Locksmith.)
Thomas Barrett, (Printer.)
John Borrowscale, (Slater.)
James Crosby, (Clerk.)
John E. Davenport, (Painter.)
Albert Day, (Merchant.)
Joseph Eustis, (Merchant.)
Daniel T. Fuller, North Chelsea, (Wheelwright.)
Benjamin H Greene, (Bookseller.)
Arnold Hayward, (Carpenter.)
Frederick A. Henderson, (Furnisher.)
Stephen A. Stackpole, (Clerk.)

The Court having named Mr. Byram, Foreman, he at first asked to be excused from serving in that capacity; but on the intimation of the Court that they did not perceive the necessity and propriety of the request, Mr. Byram took his place in the foreman's seat.

The jury having been duly empanelled, the clerk proceeded as follows: —

"John W. Webster: — hold up your right hand."

"Gentlemen of the Jury: — hearken to an indictment found against the prisoner at the bar by the grand inquest for the body of this county."

The clerk then read the indictment, as before given on page 1.

Having concluded the reading, he proceeded: —

"To this indictment, Gentlemen of the Jury, the prisoner at the bar has pleaded Not Guilty; and for trial has put himself upon the country; which country you are. You are now sworn to try the issue. If he is guilty, you will say so; if he is not guilty, you will say so, and no more.

Good men and true! stand together and hearken to your evidence!"

The Attorney General, in rising to address the jury, first submitted to the Court the following motion:—

"*May it please Your Honors,*

In the preparation of this cause for trial, owing to the voluminous mass of testimony to be examined, and the engagements of the Commonwealth's Attorney for this county in another court, I have been under the necessity of calling to my aid the services of my friend, Mr. Bemis, a member of this bar. He has rendered me that service; and the Court will readily perceive that from his familiarity with the case, and the extent of the inquiry before us, likely to occupy the Court for many days, if not weeks, a continuance of his assistance will be highly desirable. I should have been glad to have him open the cause to the jury; but a sense of official propriety, concurred in by the opinion of friends with whom I have conferred upon the subject, seems to require that the legal representative of the government should address the jury in both the opening and the closing of the cause. I, however, move Your Honors, that Mr. Bemis may be permitted to aid me in all other respects in the conduct of the trial as associate counsel."

Mr. Merrick. We do not think the request, under the circumstances, an unreasonable one.

Chief Justice. The Court see no objection to the allowance of the motion. It is granted.

The Attorney General thereupon proceeded to open the case as follows:

May it please Your Honors, and You,
Mr. Foreman and Gentlemen of the Jury:

In entering upon our respective duties, in a case of such interest and importance as the one now before us, I am sure that none of us can need anything like admonition to impress us with a sense of our responsibility, or anything like exhortation to a conscientious fidelity in discharging ourselves of that responsibility. Least of all, do I deem it necessary to

urge that common topic of caution to a jury, to keep themselves free from all excitement, which may exist out of doors, upon the subject of their investigations; — an excitement which, in this case, has undoubtedly affected the whole community, and which has arisen out of an event that must have excited any community in which human life had any value.

Here, Gentlemen, in the clear, calm light of Justice, — in this Temple of Justice, — we are to endeavor, with all the aids which in the ordinary course of legal procedure, we can command, to ascertain the simple truth of the accusation brought by the grand jury against the prisoner at the bar. You are to try this cause, as you would any other which you had solemnly sworn to try, "according to the evidence given you." I am to conduct it, so far as the conduct of it devolves upon me, fairly, I trust, and frankly, with a just regard to my official obligations, and not going beyond their requirements.

We are all engaged in a service, not of our own seeking, but one imposed upon us by our various duties to the Commonwealth, to the community, and to the prisoner at the bar. — They are painful duties; laborious and responsible; — but they are *duties;* and that single word carries with it all that need be addressed to right feeling, right thinking, and conscientious men. They cannot be evaded or slighted; and all that we can hope for, is, by faithfully and patiently addressing ourselves to them in our respective spheres, that we may bring the issue before us, to a righteous and just result.

The grand jury of this county, after a careful and patient investigation, have, upon their oaths, charged the prisoner at the bar with the crime of wilful and deliberate murder. You have been selected, from the mass of your fellow-citizens, to hear the evidence on which this charge is founded, to listen to all that the prisoner may offer, to receive from this, the highest judicial tribunal of the Commonwealth, such instructions and directions as will enable you to apply intelligently the rules of law to the evidence submitted to you, and then to pronounce whether this charge is true. This, Gentlemen, is your high and responsible duty; the highest, the most responsible, that, under our system of government, is ever confided to the citizen. Mine is of a different character, though tending, I trust, to the same result; and the view that I take of it will furnish an explanation of the mode in which it is my purpose to open this cause, and introduce to you the evidence, which, with the aid of my associate, I shall have occasion to lay before you.

I desire, Gentlemen, here, in the very opening of these proceedings, distinctly, and under a sense of the responsibility which rests upon me, to say, that I regard my official duty in the trial of a cause like this, as being, in its essential character, a judicial one. I am here to aid and assist you, as well as I am able, in arriving at the truth. The too prevalent idea, that the functions of a prosecuting officer require him to press a prosecution beyond what any fair-minded seeker after truth would press it, I repudiate and disavow. I have always done so; and if such a demand were made upon me by the supposed exigencies of my office, I would not hold that office a single hour. I am here to represent the Commonwealth; to see, that as far as in me lies, the justice of the Commonwealth is vindicated, while, at the same time, the rights of every person charged with its violation are protected. I shall endeavor, therefore, to perform that duty, as well with fairness to this prisoner, as with fidelity to the community and the Commonwealth, which you and I alike represent.

In this view of our respective duties, I shall confine myself in the opening of this cause, to as plain, simple, and concise a statement of the evidence which we expect to lay before you, as is practicable. I shall scrupulously endeavor not to pre-occupy your minds, or to forestall your judgments, by any comments upon, or inferences from that evidence. Nor shall I indulge in the discussion of any general topics, however naturally they may seem to be suggested by, or to grow out of, the facts submitted to you in proof. But I shall content myself with presenting you with an outline of the facts; not a detailed and minute statement, but such an outline of the evidence within the possession of the Government, as will facilitate your inquiries, and indicate to you the grounds upon which the grand jury, acting under the same sanctions which have now been imposed upon you, have made their presentment against this prisoner.

That presentment involves two general propositions: —

First, that Dr. George Parkman, the person named in this indictment, has been murdered.

Second, that he was murdered by John W. Webster, the prisoner at the bar.

I propose to state the evidence applicable to these two propositions, which are independent of each other; and then to ask your consideration, under the direction of the Honorable Court, to the form in which these propositions have been presented by the grand jury, in the several counts of the indictment, and to the law applicable to them.

We shall offer, then, Gentlemen, in the first place, evidence to show you that Dr. George Parkman, a well-known and highly respectable citizen of Boston, was living, in good health and cheerful spirits, on the morning of Friday, the twenty-third day of November last; that he was engaged in his usual occupations on that day, up to fifteen minutes before two o'clock, at which time he was last seen alive, entering the Medical College in Grove Street. He did not return to his dinner on that day; a fact, which, on account of his well-known habits, was of itself calculated to excite uneasiness in his family. He was scrupulously observant of his appointments, and especially punctual at his meals; and if ever obliged to be absent, he would be careful to apprise his family of the cause, and of his whereabouts.

It will appear that he had, at that time, an invalid daughter, to whom he was tenderly attached; and upon that day, with a view, probably, of procuring a delicacy agreeable to her taste, he had purchased a quantity of lettuce, a rare plant at that season, which he left at a shop near the Medical College, with the intention, as the evidence indicates, of returning and taking it home with him upon going to his dinner.

At that shop he made certain purchases, went from there towards the Medical College, saying that he would return in a few minutes. He did not return. And he did not return to his home.

His family and his friends became alarmed. They waited, however, until the next morning, before making any public movement in relation to his absence.

On that day, which was Saturday, the 24th, his relatives, those who had been in his employment, those who knew him and knew his habits, were informed of his disappearance; and a general search, though conducted with somewhat less of publicity than was afterwards resorted to, was commenced. The police were applied to, to aid in that search; and in the evening papers of Saturday, notices were published, calling the attention of the public to the fact of his disappearance. Rumors of his having been seen were rife. When brought to the knowledge of those who conducted the search, they were promptly traced out, and were found in every instance to be entirely unfounded. His friends and the police heard so many confident statements of his having been seen in different parts of the city, that in one of the advertisements which was published at a very early period after his disappearance, he was represented by them as having been seen in or near Washington Street on Friday afternoon at five o'clock. But on trac-

ing this rumor, and others like it, to their source, it was satisfactorily ascertained by those who had the deepest interest in following up this search with assiduity, vigilance, and care, that the persons from whom these rumors proceeded, in every instance, were either mistaken in respect to the time when he was seen, or the identity of the person.

The entire police of the city were brought into requisition: handbills were issued, offering the most liberal rewards; one of them a reward of three thousand dollars. When these rewards were offered to the public, and no tidings of him were obtained, whatever might have been the hopes and expectations of those who had looked for his reappearance, those hopes and expectations gave way; and the apprehensions which had begun to be entertained by his friends, the police, and the public, deepened into certainty, that he was no longer in the land of the living.

In the course of Sunday, the day following the first publication in the newspapers, — and I now propose for your convenience, Gentlemen, to state, in chronological order, what will be proved, — on Sunday, the family of Dr. Parkman learned from Dr. Webster, that on the Friday previous, Dr. Parkman had been in his company at the Medical College at half-past one o'clock. The circumstances under which that communication was made to the family, I may have occasion to advert to in another stage of these proceedings. I now speak of it only as one fact in connection with Dr. Parkman's disappearance, and with the search for him that was subsequently made. That search was continued through Monday, Tuesday, Wednesday, Thursday, and up to Friday of the week following his disappearance; and although those who were engaged in it did occasionally hear, as I have already remarked, that he had been seen after the time when he was represented by the prisoner to have been in his rooms at the Medical College, and although they pursued every report, and followed up diligently every rumor which came to their knowledge, — going to Salem, to East Boston, to different parts of this city where he was reported to have been seen, yet no reliable information could be obtained respecting him.

The evidence will show you how thorough a search for him was made. Handbills were circulated in every direction. The river was dredged. The yards, the out-buildings, the dwelling-houses in the west part of the city, where he was known to have had a large property, were thoroughly and faithfully searched. And beyond the city, for an extent of sixty miles throughout the adjacent towns, the most diligent

inquiries were set on foot by the chief of the police, Mr. Marshal Tukey. In short, Gentlemen, such a search was instituted as must have led to his discovery if he had still been living.

It may with propriety be stated here, that some persons have honestly believed, that they saw Dr. Parkman after the period when he entered the Medical College. But it is not within the knowledge of the Government, whatever may be the impressions thus entertained, that any person has appeared, who could state that Dr. Parkman was seen alive and conversed with, after the time when we shall show him to have been at the Medical College; — ten or fifteen minutes before two o'clock, on Friday, the twenty-third day of November: and the inevitable and unavoidable inference is, that he is dead.

This inference, you perceive, Gentlemen, is derived from evidence entirely independent of another class of facts, which I shall now proceed to state; and you will judge how irresistibly those facts compel us to the conclusion that that inference is justly drawn.

On Monday and Tuesday there was a search at the Medical College; the manner of it, the extent of it, the character of it, particularly with reference to the rooms which were occupied by this prisoner, Dr. Webster, will demand your consideration hereafter. I only state now, that while in other portions of the building the search was prosecuted with extreme thoroughness, the examination of Dr. Webster's apartments was a mere formal one, no suspicion on the part of the police then having attached to him; and such a suspicion, of course, being very unlikely, unless upon some strong grounds, to be fastened upon him by any one.

On Friday, the thirtieth of November, in a vault of the privy connected with the prisoner's laboratory at the Medical College, were found certain parts of a human body, answering to the description of Dr. Parkman. They consisted of a pelvis, (or the hips and the portion of the body included between them,) of the right thigh from the hip to the knee, and of the left leg from the knee to the ankle; and with them were found certain towels marked with the initial of the prisoner's name, and similar to those used by him in his laboratory.

On Friday evening and Saturday morning, were also found in an assay furnace of the laboratory, fused in with slag and cinders, a great number of fragments of human bones, and certain blocks of mineral teeth; portions of the bones fused in with the residuum of the coal, still adhering to the sides

of the furnace; thus demonstrating that they had been subjected to the action of fire in that furnace. Small quantities of gold, which had melted, and other substances, including a shirt-button, were also found in the same place, the details of which will be disclosed to you by the testimony.

In the course of the day on Saturday, there was found in a remote corner of the laboratory, in a place which had been noticed but not examined, on the Tuesday previous, by one witness, who will state the circumstances under which he observed it, a tea-chest, containing imbedded in a quantity of tan, and covered with minerals, the thorax or chest of a human body, the left thigh from the hip to the knee, and a hunting-knife of a peculiar description. Around the bone of the thigh was tied a piece of twine or marline, which will be produced and submitted to your examination, with a ball of the same species of twine found in one of the private drawers of the prisoner.

These remains of a human body, found in the privy and tea-chest, were subjected to the examination of competent medical and scientific men. They were put into apposition with each other, and found to resemble, in every respect, *and in no respect to differ from*, the corresponding portions of the body of Dr. Parkman. There were missing from this human body, when thus placed in apposition, the head, the arms, the hands, the feet, and the right leg from the knee to the ankle. The evidence will probably satisfy you that they belonged to a person about the age of Dr. Parkman, which was sixty years. It will also appear, that the height of this body, five feet, ten and a half inches, — (taking, as the witnesses will explain to you, the average length for the missing parts; of the head from the neck, and of the foot from the ankle,) — corresponded to the height of Dr. Parkman, which, as we shall show you by his passport, and by other evidence, was precisely five feet, ten and a half inches. The evidence will also show that he was of a peculiar form and shape, and that this body had the same peculiarities, and that the hair on these remains was similar to his.

We shall then, Gentlemen, put into this case, further evidence upon this point, of which I shall leave you to judge and make the proper estimate; for I am not here to comment upon it in this stage of the proceedings, but merely to state to you a general outline of what it is. Of the bones found in this furnace, not a fragment was discovered which is a duplicate of any one found in the vault or in the tea-chest; showing that unless there existed a miraculous coincidence, the bones found in the furnace, the parts found in the tea-

chest, and the parts found in the vault, all constituted portions of one human body.

There will also be some evidence which will suggest to your minds a probability, at least, if it does not impress them with a conviction, that some of the bones of the cranium (the head,) found in the furnace, were fractured before they had been subjected to the action of fire. The extent, and weight, and force, of this evidence, you will judge of hereafter.

Then, Gentlemen, there will be submitted to your inspection, a block of mineral teeth which was found in that furnace, resting upon the grate, so near the bottom of the furnace that it took the current of cold air, whereby its original form was singularly preserved: — a block of mineral teeth, which two accomplished dentists, Dr. Keep, and his assistant, Dr. Noble, will testify were the teeth of Dr. Parkman, made for him in 1846, upon an occasion which they distinctly remember. Dr. Keep will state to you how he recognizes his own work, and the grounds upon which he feels the confidence that he will express in his testimony; a confidence so strong, from his recollection of the work itself, and the formation of these teeth, with certain peculiarities of their structure, that if he had seen them any where, or at any time, since their completion, he would have known them as the teeth which he made for Dr. George Parkman in the autumn of 1846. There were other portions of mineral teeth found, which will aid you in your judgment of the reliability of the testimony of the dentists, but which are not so characteristic, as the block of which I have spoken.

Dr. Keep has in his possession, and will produce before you, an exact mould of the entire jaws of Dr. Parkman, taken at the time he made this set of mineral teeth. You will see by that mould that Dr. Parkman's jaws had a peculiar conformation; so peculiar, that, unless through some caprice of nature, their precise counterpart could not exist. It will also appear that these mineral teeth must have been thrown into that furnace, and subjected to the action of fire in connection with the head. This will be made perfectly clear to you upon the evidence of another scientific witness, that portions of them were found fused in with certain fragments of the jaw-bones. Beyond this, there will be exhibited to you the bones of the right lower jaw, found in that furnace, with broken and serried edges, which will be put together, showing that they belonged to one and the same jaw; and the conformation of that jaw, when the fragments are thus put together, you will find pre-

cisely corresponding, in all its striking peculiarities, with the mould of Dr. Parkman's jaw taken by Dr. Keep. This will be the nature of the evidence to satisfy you that Dr. Parkman came to his death as charged in the indictment, at the Medical College, and that these were his remains.

There are one or two points to which it may be proper, in this connection to advert, before proceeding to state the evidence applicable to the other branch of the case. The thorax found in the tea-chest exhibited a perforation, as to which there will be evidence tending to show that it was a wound which penetrated between the ribs, severing a portion of the membrane that covers them, and entering the region of the heart. It will also appear that there had been chemical applications of strong alkalies made to these remains, as demonstrated by an accomplished chemist, who will be here to state the result of his examination. It will further be shown that that these were not the remains of a subject for dissection, in the Medical College, for two reasons: one, that there was no injection of the veins with any preservative fluid, which is the invariable mode of treating such subjects there; and, secondly, that all such subjects are accounted for independently of this, by the Demonstrator of Anatomy, who keeps an accurate record of them.

The evidence will, doubtless, satisfy you that these remains were separated, — I was about to say, mutilated, — by some person possessing a certain degree of anatomical skill; though they were evidently not dissected for anatomical purposes. There are various facts in connection with them which I will not detain you to recite; you will appreciate them as they come from the witnesses. I have proceeded far enough to apprise you of the character and general scope of the evidence upon which the Government relies to prove that these were the remains of Dr. Parkman, and that he must, upon this state of facts, have come to a violent death.

Your next great inquiry, Gentlemen, if you are satisfied upon the evidence that Dr Parkman was murdered, will be, was it by the prisoner at the bar?

The inquiry thus opened will lead us to the consideration of facts existing long prior to the disappearance of Dr. Parkman. Evidence will be introduced to show the relations subsisting between the prisoner and the deceased; but it will not be necessary to detail their business intercourse from an earlier period than the year 1842, when there was a loan of money made by Dr. Parkman to Dr. Webster. It will appear that since that time Dr. Webster has been always embarrassed

in his financial affairs, and often reduced to great straits for money. On the other hand, Dr. Parkman was a large property-holder, accustomed to making loans to others. He was a liberal man in his donations, and kind, benevolent, and considerate towards those whom misfortune rendered unable to meet their engagements with him. At the same time, he was scrupulously exact in all his business dealings. A just man himself, he looked for justice in others. Willing to be himself judged by a strict rule of honesty and punctuality, he applied the same rule to his dealings with other men.

In 1842, he loaned to the prisoner $400, for which he took his note, secured by a mortgage of certain personal property. This note was unpaid in 1847, at least, not paid in full, when Dr. Parkman made one of a number to loan to Dr. Webster a certain sum of money to meet demands then pressing against him. Arising out of, or connected with, these transactions, Dr. Parkman, in January, 1847, took from Dr. Webster a note for $2,432, secured by a mortgage of all his personal property, including his household furniture and his cabinet of minerals. This note was for the amount of the advances then made by Dr. Parkman and others, and embraced also a balance of $342 83, then due on the note of 1842.

In April, 1849, a friend of Dr. Webster had an interview with Dr. Parkman, and subsequently furnished Dr. Webster a statement showing that the amount then due to Dr. Parkman on the mortgage note was $456 27, while a further amount of about $600 was also due upon it to the other parties who had contributed in making the advances for which it was originally given.

About this period, Dr. Webster made an application to Robert G. Shaw, Esq., a brother-in-law of Dr. Parkman, to raise money, representing his necessities to be so great that an officer was about entering his house to attach his household furniture, and offered to sell to Mr. Shaw those very minerals which were then under mortgage to Dr. Parkman. Mr. Shaw, commiserating his condition, and having no knowledge that his brother-in-law had a mortgage upon the property, agreed to advance to Dr. Webster the sum of $1,200. He did advance this amount, partly in cash and partly by his note, which was discounted for Dr. Webster at the Charles River Bank; and received from Dr. Webster a clear bill of sale of the cabinet of minerals.

Dr. Parkman, learning subsequently, that these minerals had been conveyed to Mr. Shaw, was greatly incensed at what he considered an act of fraud on the part of Dr. Web-

ster, and avowed his determination to compel him to pay his debt. From this period he pursued Dr. Webster as a creditor who felt that his confidence had been violated, and who regarded his debtor as a dishonest and fraudulent man. The evidence will show you that he not only entertained this opinion, but that very recently before his disappearance he had communicated it in a message to Dr. Webster himself. It will also appear that Dr. Webster obtained further delay from Dr. Parkman, under a promise that he would pay him from the proceeds of the sales of tickets to his lectures at the Medical College.

And here I ought to state that Dr. Webster's connection with the Medical College was independent of his Professorship in the University at Cambridge. He was a Professor in both. His compensation for services in the Medical College depended upon the sale of his lecture-tickets to the students. The Professors had made an arrangement with a very respectable person, Mr. Pettee, a clerk in one of the banks in this city, to collect for them the moneys paid for these lecture-tickets. The lectures commenced on the 7th of November. On the 9th, Dr Parkman, having in view the purpose he had avowed, of compelling Dr. Webster to pay his debt, and having also in his memory the promise of the latter to pay it from the proceeds of the sales of his tickets, called on Dr. Webster and insisted upon the payment. Dr. Webster stated that he had not then received the money for his tickets, and requested Dr. Parkman to wait a further period. At that time Dr. Webster had, in fact, received a considerable portion of his money, which had been appropriated to other purposes than the payment of his debt to Dr. Parkman. There were other debts hanging over him; one of which, a note to Dr. Bigelow, one of the Medical Professors, for about $230, was paid from this fund.

Not satisfied with his statements, Dr. Parkman on the 12th of November, called on Mr. Pettee, the collecting agent, to ascertain what was the condition of Dr. Webster's funds in his hands. Two days afterwards, he again called, and threatened a trustee process, or spoke of one to Mr. Pettee, as the only mode of getting his pay from Dr. Webster; and then sent a message by Mr. Pettee to Dr. Webster, that he considered him a dishonorable and dishonest man. On Monday evening, the 19th, after the repeated subterfuges of Dr. Webster, he called on him again, and declared with some asperity, that "tomorrow something must be done." On the next morning Dr. Webster sent to Dr. Parkman a note, the con-

tents of which are unknown to the Government. On Thursday, the day before his disappearance, the latter rode out to Cambridge, to have another interview with Dr. Webster. Such were the relations of these parties on the morning of that fatal Friday, the twenty third of November: the improvident and embarrassed debtor evading the payment of his debts, the incensed creditor steadfastly pursuing him.

At about eight o'clock on that morning, Dr. Webster called at the residence of Dr. Parkman, in Walnut street, and there made an appointment for Dr. Parkman to call at the Medical College to receive his pay at half-past one o'clock. Though no one in the family knew that Dr. Webster was the person who called, yet the whole evidence in the case, will, doubtless, satisfy you of that fact. He did not call at Dr. Parkman's house to pay him there, but to appoint a meeting at the Medical College at a time when his rooms would be vacated by the students, between the hours of one and two o'clock, his lecture terminating at one. About nine o'clock on that morning, Mr. Pettee, anxious to get out of his hands the balance of money due to Dr. Webster, in consequence of Dr. Parkman's threats of a trustee process, which he wished to avoid, waited upon Dr. Webster, and paid him a balance of ninety dollars, in a check on the Freeman's Bank. He then informed Dr. Webster of Dr. Parkman's repeated inquiries respecting the state of his funds, and his threats of a trustee process. Dr. Webster thereupon remarked to Mr. Pettee, "You will have no further trouble with Dr. Parkman, *for I have settled with him.*"

I may as well state, in this connection, that Dr. Webster had constantly held out to Dr. Parkman the expectation, and had represented to others his intention, of appropriating the money received from the sale of his tickets to the payment of Dr. Parkman.

We shall show you that in this, Dr. Webster has falsified. It will appear that not one dollar of that money could have gone to Dr. Parkman. The $90 check received on the morning of the day of the disappearance, was in the prisoner's possession the next day, and was deposited by him, to his own credit, in the Charles River Bank. His bank account will be produced, and will be open to any explanation which he, through his counsel, may be able to give.

Dr. Webster's lecture days were Tuesday, Wednesday, Thursday, and Friday; he had no lectures on Saturday or Monday. You will observe, therefore, that the longest in-

terval during the week, when his official engagements did not call him to the College, was between Friday and Tuesday. It will appear that on Friday, the 23d, he remained at the College till after candle-light; that he was seen there by more than one person as late in the day as that; that he was there on Saturday, and again on Sunday, which was unusual; that the doors of his rooms, which ordinarily had been left unfastened when he was absent from the College, were fastened; and that the key of one door, which he had kept deposited in a certain place up to that period, and to which one witness, who had occasion frequently to go to his rooms, had access, was carried away by Dr. Webster from the building; and that on Saturday, which is the cleaning-day in the College, the janitor who had charge of the rooms, went into Dr. Webster's back room, and attempted to go down into the the laboratory for the purpose of cleaning, when Dr. Webster ordered him out through the lecture-room door.

I have already stated that Dr. Parkman's friends, after making an anxious search for him on Saturday, had gone so far on that day as to advertise his disappearance in the evening papers.

It will appear that Dr. Webster took in one of those papers, containing the advertisement. It will also appear that his relations to certain members of the family of Dr. Parkman were somewhat intimate; that he had been a parishioner of the Rev. Dr. Francis Parkman, a brother of the deceased; that a short time previous to this event, the latter had visited Dr. Webster's family, to perform a pastoral office of friendship; and that their families had been on terms of considerable intimacy. The first disclosure that an interview had taken place between Dr. Webster and Dr. George Parkman, —the first intimation of that interview received by the family, although they had been in a state of intense anxiety from the Friday previous, — was made by Dr. Webster to Dr. Francis Parkman, about four o'clock on the afternoon of Sunday. The manner of making that communication was such as to excite the surprise, to say the least, of Dr. Francis Parkman and his family.

On the afternoon of Sunday, Dr. Webster made a similar communication, differing, however, in some particulars, to several other persons, whose testimony will be laid before you. Substantially his statement was, that Dr. Parkman came to the Medical College by appointment, at half-past one o'clock on Friday, to receive payment of his debt; that he came into the lecture-room, where Dr. Webster paid him

the money, stating the precise amount; that he received it and started immediately to go out, without leaving any evidence of the note having been paid, or that the mortgage was cancelled; that on Dr. Webster's reminding him of this, he turned back and dashed his pen over the signature on the note, telling Dr. Webster that he would see to the cancelling of the mortgage at Cambridge; that he then went out with the money in his hand, going up the stairway two steps at a time; and that he, (Dr. Webster,) had no recollection of the denomination or amounts of the bills which he paid him.

These statements of Dr. Webster will be shown to be inconsistent with each other. To one witness, he has stated that there were two persons present; to others, that there was no person present; to one witness, that he did not know in what money he paid him, as he took it indiscriminately from the students for their lecture-tickets; to other witnesses, that he did remember that there was a $100 bill of the New England Bank. And throughout the whole of this transaction, it has been placed by him distinctly upon the ground that he did, from the proceeds of the tickets to that course of lectures, pay to Dr. Parkman $483 64, which was the amount he stated to be due to him. We shall produce evidence that his whole statement is a fable and a pretence; that he did not pay to Dr. Parkman the money which he says he paid, but that every dollar of the money received by him from the sale of his tickets, went elsewhere.

Then, Gentlemen, you will have occasion, following him through that week, and observing his conduct, to consider a variety of facts like these: That, you will remember, was Thanksgiving week. Thursday, the twenty-ninth of November, was Thanksgiving day. It was a week of vacation at the College, no lectures having been delivered after Tuesday; yet during that week, Dr. Webster was at the College, locked into his rooms, daily, and at unusual hours.

It will be shown that he directed that no fires should be made in his rooms that week; and yet that he had fires, kindled by himself, of a more intense heat than had ever been made there before: That, on Tuesday, he purchased several large fish-hooks, which were afterwards found upon the premises, under circumstances which will probably connect them, to some extent, with these remains; that they were made into a grapple, being fastened to a staff by a peculiar species of twine or marline, a ball of which was also found in one of his private drawers; and that around the thigh-bone found in the tea-chest, was tied a piece of the same de-

scription of twine, the identity of which with that found upon the grapple, will be testified of by an expert in its manufacture.

I have already adverted to the fact, and to the character, of the search of Dr. Webster's rooms. The evidence will show you, that they were merely *passed through* by some of the police officers, as early as Monday; that on Tuesday, Mr. Kingsley, the business agent of Dr. Parkman, went through these rooms with several police officers, and Mr. Littlefield, the janitor, accompanied by Dr. Webster. The conduct of the prisoner at that time will be shown; that the officers, when asking about the privy, were replied to by Mr. Littlefield, in the presence of Dr. Webster, that it was the private privy of Dr. Webster, who had the key of it in his possession; that, thereupon, they suffered themselves to be called off from the privy, by Dr. Webster, to another room, they entertaining no suspicion of him, and having, indeed, already informed him that their examination of his apartments was a mere matter of form. It will be proved that there was a fire in the assay furnace at that time, and that the tea-chest, in which the remains were found imbedded in tan, was then observed by one of the witnesses, with the minerals upon it.

It will be proved that on Monday, Dr. Webster gave instructions to the Cambridge express-man, who had always before had free access to his apartments, and had been used to deposit all the packages which he brought, *inside of the laboratory*, to carry certain fagots, a box, and a bag of tan, from Cambridge to the College, and leave them in the entry, *outside the door of the laboratory;* that, on Wednesday, the same express-man, Mr. Sawin, carried two boxes to the College, and left them in like manner, outside the door, being unable to find the key in the place where Dr. Webster had usually kept it.

Evidence will be offered, tending to show that in the course of that week, Dr. Webster, in conversation with several persons, endeavored to impress them with the belief that Dr. Parkman had been seen going over to Cambridge, after the time when it was stated by him that he had been at the Medical College: that he went so far as to urge upon one witness, Mrs. Coleman, the declaration that she saw Dr. Parkman on the afternoon of Friday; she having stated to him that it was on Thursday; and that he made to her certain representations, which will probably have some influence in determining your judgment with respect to the sincerity of his inquiries: that on Friday morning, he went to a respectable

mechanic in this city, and ordered a tin box to be made very strong, and in such a manner that he could solder it up himself perfectly tight; and that in the course of his interview with this mechanic, he stated that it had been discovered by certain mesmeric agencies that Dr. Parkman's body had been carried off in a cab, and that the cab had been found, saturated with blood.

There is another branch of this case to which the Government will ask your intelligent attention. Much has been said of late, approaching very nearly, I think, to cant, about moral evidence. There is, doubtless, Gentlemen, a species of moral evidence, which is entitled to great weight, and which oftentimes is successfully invoked by persons charged with crime, to give an assurance of innocence. Such evidence is proper and legitimate, and will doubtless be put in here on behalf of the prisoner, and you will give it its due consideration. I hope you will also give heed to a class of facts which furnishes strong evidence, of the same character, against the prisoner: — facts tending to show, that in the progress of these events, nature has spoken out through the prisoner himself; that his physical system has evinced an intense nervous agitation; that significant ejaculations have escaped him when he intended to have kept his lips sealed; and that inquiries have been made by him which it is difficult to reconcile with conscious innocence. This species of evidence will connect itself not only with the circumstances of his arrest, but will apply to a considerable period of time that followed it.

On Thursday, in consequence of suspicions which had been conceived in the mind of Mr. Littlefield, the janitor of the College, certain steps were taken by him to make an examination of the privy vault under Dr. Webster's laboratory. During the previous examination of the Medical College by the police officers, on Tuesday, it had been ascertained that there was no mode of access to this vault, except through the privy above, of which Dr. Webster himself kept the key. You will have to consider, Gentlemen, the testimony which applies to the examination of this vault, and the discovery of those remains in connection with other branches of the case; and you will allow me very respectfully to say to you, confiding, as I certainly do, in your intelligence, that you may be liable to be misled in weighing that testimony, unless you carry along with it in your minds other facts which tend to explain and enforce it.

I think you will find by this evidence, that as early as

Sunday evening, Mr. Littlefield conceived the suspicion that Dr. Webster knew more than any other person about the disappearance of Dr. Parkman; and that during that week he acted, throughout, in an honest conformity with those suspicions. You will consider that being in the employment of the Professors in the Medical College, and relying upon that employment for his bread, he was in some degree a dependant of Dr. Webster: you will reflect that such a man, entertaining such a suspicion, would naturally proceed with the greatest caution and deliberation; and you will find that he did so.

On Thursday, he attempted to open that vault, which, with the exception of Dr. Webster's private room, was the only part of the building that had not been examined, and to which there was no access, save through the laboratory, where Dr. Webster himself was bolted in a large portion of the time. He commenced breaking through the wall on Thursday, and found it much more difficult than he anticipated; he continued it, however, till he had penetrated through two or three courses of brick, there being five or six courses in all. On Friday morning he communicated his purpose to two of the Professors, Drs. Jackson and Bigelow; and following up their suggestions, he continued his labor. While at work, he set his wife to watch for Dr. Webster's approach to the building, and to notify him of it by a certain signal; but directed her not to disturb him if any of the other Professors came. At one time, Mrs. Littlefield, having mistaken another person for Dr. Webster, gave the appointed signal, and he suspended his operations. On discovering the mistake, he resumed his work, and near the close of the day, on Friday, effected an opening into that vault, and there discovered what justified and confirmed his own suspicions, and sent a thrill of horror through the heart of the whole community.

You will judge of the deportment of Mr. Littlefield, when this discovery was made; of his conduct when he went, as he had been directed to do in the event of his discovering anything, to Dr. Jacob Bigelow's, and on not finding him at home, to his son's, Dr. Henry J. Bigelow, another of the Professors. It will be shown, that young Dr. Bigelow returned with him to the College; that the Chief of the Police was summoned; that the remains found in the vault were examined; and that the Government, thereupon, caused Dr. Webster, a Professor in that Institution, to be arrested as the murderer of Dr. Parkman.

That night, and the following day, this discovery was fol-

lowed by others of more importance, made by the police without the aid of Mr. Littlefield; namely, — the bones and mineral teeth in the furnace, and the other portions of the remains in the tea-chest. The importance of these discoveries in determining the question of the identity of the remains, compared with that made by Mr. Littlefield, will be apparent, when you have heard the testimony respecting them.

After his arrest, Dr. Webster made declarations inconsistent with each other, and, as I think you will be satisfied, inconsistent with his own convictions. He charged upon Mr. Littlefield, either the commission of the homicide, or of conspiring to fix it upon himself; while, almost in the same breath, he averred with great confidence, — what was entirely inconsistent with this, — that "those were not the remains of Dr. Parkman, any more than they were his own." His conduct from the time of his arrest up to the time of his arraignment in the Police Court, will be matter of evidence, and you will give it proper consideration. You will consider especially, his declarations respecting Mr. Littlefield, in connection with the evidence of his conduct towards him, during the previous week. One fact I will state here, though I do not intend to recite the details of his conduct or conversations. On Tuesday, Dr. Webster asked Mr. Littlefield if he had got his Thanksgiving-turkey; upon his answering in the negative, he gave him a written order for one upon a provision-dealer; the first present he had ever made him, during an intimate intercourse of seven years, and this at a time, when, as he subsequently stated, he was looking upon him with suspicion, and "did not like the man."

He was taken, upon his arrest, to the Medical College, when the remains were brought up from the vault to the room above. The circumstances which transpired there, will be detailed to you. The reason for taking him there, was, to give him an opportunity to be present when a further search was made of his apartments, and particularly of his private room, to which the police had not then had access.

Mr. Parker, the Attorney of the Commonwealth for this County, — as he will state to you, — with a disposition to act with fairness towards the prisoner, upon the presumption that he was an innocent man, deemed it an act of justice that he should be present at the examination, to explain anything which might be found by the police upon his premises.

There were found in his private room, a pair of pantaloons, marked with Dr. Webster's name, and a pair of slippers, which on examination by a scientific expert, are shown to

have been spotted with blood. There were towels nearly new, marked with the initial letter of his name, found in the privy-vault, where the tide ebbed and flowed: — this vault, it will be shown, gave ingress to the sea, but not to any solid substance. A large number of skeleton-keys were found in his laboratory, fitting nearly every door in the College, which he stated he had found in the street and carried to his room. There was found upon his person at the time of his arrest, the key of the privy; though when asked by one of the officers where that key was, he pointed to one hanging upon a nail in his private room, saying, "there it is;" which, on being tried, did not fit the lock of the privy door.

There was also found upon his person a paper, which will be put into the case, and of which I shall be glad to hear some satisfactory explanation from his learned and able counsel. It purports to give two different versions of the interview which Dr. Parkman had with him on Friday, the twenty-third of November. The character or contents of this paper, I will not now remark upon, as it will be laid before you for your judgment.

On the Monday following his arrest, he was arraigned before the Police Court of this city; and there, either with or without, the advice of counsel, — perhaps it is quite immaterial, which, with reference to the effect of the fact, — he declined an examination; thus admitting that there was a case involving materials for the grand jury to pass upon, although the consequences of that proceeding were to be a commitment to close confinement, until the Government should put him upon his trial.

After his commitment by the Police Court, he wrote a note to a member of his family, which, according to the usage at the jail, could not be sent to its destination without inspection by the proper officers; and which, upon examination, was found to contain an injunction to another member of his family, not to open a certain bundle which he had deposited with her, but to keep it just as she received it. This suggested to the police a suspicion, that what he sought to conceal, might be important; and a messenger was immediately despatched to his residence at Cambridge, who obtained the package. It was found to contain the two notes given by Dr. Webster to Dr. Parkman in 1842, and 1847, and the paper, which I have already referred to, showing the amount of Dr. Webster's indebtment to Dr. Parkman in April, 1849, with a statement of interest upon that amount in pencil, in Dr. Webster's own hand-writing, which made the aggregate

amount of his indebtment, the sum of $483 64. An explanation of this, consistent with his innocence, you will call upon him to give. I cannot explain it. I hope it may be satisfactorily done by his counsel.

The Government will also put into this case, testimony tending to show that certain letters were written by the prisoner after the disappearance of Dr. Parkman, calculated to draw the police off from the Medical College to other places, and to divert public opinion into other directions. I make no other statement of this matter, than is involved in saying, that these letters have been submitted to experts, who have given the opinion, that they are in the hand-writing of the prisoner. Of the value and weight of this opinion, you will judge.

But, Gentlemen, one thing is true: — that of all this mass of circumstances, the prisoner has vouchsafed no explanation whatever, to the Government or to the public. He has done, what, if he or his counsel thought it wise or expedient, he had a perfect right to do. He has remained in close custody, without so much as asking the Government to disclose the grounds of the charge it has made against him. He was content to be committed to prison, entirely in the dark as to the Government's evidence, and to await and give, whenever the Government called upon him for his trial, his first and final explanation of that evidence. I can say this, Gentlemen, with the utmost sincerity; — that I trust he may be able to give such an explanation as will carry conviction to your minds, and to the minds of the entire civilized world, that however these circumstances may press upon him, he can lift them off, and stand out, purged from suspicion, in the bright light of day. If he succeeds in doing this, no one will have more gratification than myself, in the result; and I am sure that you will share that gratification with me.

But, I think upon the evidence which the Government will lay before you, that you will call upon this prisoner to do something more than to say that the testimony is questionable upon immaterial points.

You will call upon him for a clear and satisfactory explanation of one class of facts, at least; namely, — his possession of the notes, and the payment of the money, which he has so repeatedly declared that he made to the deceased; and which, unexplained, must carry conviction to every mind that he is not guiltless of an agency in that sad and calamitous catastrophe,— the death of one who had been *his* benefactor, as well as the benefactor of the Institution with which he was connected.

The grand jury of this county having before them this evidence, and other evidence which I have not deemed it necessary to state, have charged upon the prisoner the wilful murder of Dr. George Parkman. They have made this charge in an indictment, containing four counts; and it may be proper for me to occupy your attention for a single moment, in considering certain questions of law involved in this form of presentment.

I do not wish to embarrass you, or the counsel on the other side, by maintaining, or seeming to maintain, any proposition which is not well founded in law. And I am perfectly free to say, that if I were left to my own unbiassed judgment as a prosecuting officer, no occasion would have arisen for the learned criticisms of the newspaper-press upon the alleged contradictory character of the several counts in this indictment; for I should have confined the description of the charge to that set forth in the last count.

Still, Gentlemen, as a matter of technical law, if the grand jury believed that there was evidence that the death of Dr. Parkman was caused, as is alleged in the first count, by stabbing with a knife, it would be taking a very presumptuous risk, for a criminal pleader, to have omitted the count which sets forth that fact; and you will perceive that there is some evidence tending to show that the body of Dr. Parkman was penetrated by a wound extending to his heart, which would have caused an internal effusion of blood; and certain indications to which you will be referred, may be found perfectly consistent with this allegation. This, therefore, gave rise to the first count.

Then there is a certain amount of evidence, somewhat mysterious now, but which, in the developments of the future, may be rendered more explicit, upon which the grand jury might have anticipated that a charge of killing Dr. Parkman with a hammer by a blow upon the head, would be satisfactorily substantiated against the prisoner. — And I will state, in this connection, that a sledge-hammer, which had been a long time in the Medical College, was on the morning of Friday, the twenty-third of November, seen in Dr. Webster's room, behind the door. It was taken by the janitor and placed in the laboratory; but no trace of that hammer has been found, although the building has been searched for it, from roof to foundation. This, therefore, occasioned the necessity of a second count.

To the third count it is not necessary to call your attention.

The last count charges, that Dr. Webster, by some means

or instruments, and in some mode or manner, to the jury unknown, did deprive Dr. Parkman of life. If you are satisfied that these mutilated remains, were those of Dr. Parkman, and that he came to his death at the hands of Dr. Webster; then, although there may not be a particle of proof of the mode in which the homicide was perpetrated, it will be no less your duty to return a verdict of guilty upon the fourth count of the indictment, than it would be to return the same verdict upon the first count, if it were directly proved that he came to his death by a stab with a knife. This is the view taken by the Government, and the Court will instruct you whether it is a correct one.

We should be living under a code of law, which, in our state of intelligence and civilization, would reproach us, more than many of the barbarous customs of heathen nations can reproach them, if, by his scientific skill, a murderer could conceal the mode in which he compassed and consummated the death of his victim, and a jury, being satisfied of the act of killing, should still find that the law was too weak to reach him, because the mode or instrument of death was not set out in the indictment. Such, we maintain, is not the law of Massachusetts. If you are satisfied that Dr. Parkman came to his death, in any manner, by the voluntary act of the prisoner, then the case is to be determined by the rule of law, which we understand to be settled in this Commonwealth; namely, — that a voluntary killing being proved, it is held to be murder, unless there is evidence arising out of the whole case, satisfactory to the jury, upon a preponderance of proof, that the act was committed either in necessary self-defence, or under such provocation, as reduces the offence to manslaughter: — the provocation, however, extending to blows, and not consisting in words merely, of however irritating or exasperating a character.

In other words, we understand it to be the established rule of law, — and I respectfully submit, may it please Your Honors, [here the Attorney General turned and addressed the Bench,] in a case of *secret* killing, — upon the *unanimous* judgment of this Court, that if a voluntary killing be shown, the presumption of law, is, that it is murder, unless the evidence produced by the Government, or that furnished by the defendant, proves circumstances of mitigation accompanying the killing, which reduce it to a lesser offence.*

* The Attorney General was here understood to refer to the case of *Commonwealth v. York*, 9 Met. 93, in which His Honor, Judge Wilde, who dissented from his associates upon other points, concurred with them, — (at least,

I do not know that it is necessary for me to add another word, Gentlemen, upon the law which governs this case, or the manner in which the grand jury have presented the charge against the prisoner.

You are to consider whether it is satisfactorily shown, beyond a reasonable doubt, — and the nature of that doubt we shall have occasion to discuss hereafter, — that Dr. Parkman came to his death by the hand of the prisoner at the bar. If it is, unless something is shown in a manner satisfactory to your minds, that the act was committed under such circumstances, as in the eye of the law, (as will be stated to you by the Court,) reduce it to a lesser offence than the grand jury have charged against him, your verdict must be, that this indictment is proved.

And, Gentlemen, while you will carefully, considerately, and as true men, hearken to the evidence; while you will give to the case that patient and conscientious attention which a just regard for the interests of the Commonwealth demands of you; and while you will give to the prisoner the full benefit of every legal presumption, and of every legal doubt which the law accords to him, and the facts may justify: — if, upon this whole case, when we shall have laid it all before you, the conviction shall be impressed upon your minds, that he is legally responsible to the violated justice of the Commonwealth, for the murder of an honored and unoffending fellow-citizen, I trust that you will have the firmness to say so by your verdict.

The Attorney General having concluded his opening statement at one o'clock, the Court took a recess of a few minutes.

On the resumption of the session, Mr. Clifford stated to the Court, that it would be highly desirable, at some stage of the trial, that the jury should be permitted to go to the Medical College, and take a view of the premises where the murder was alleged to have been committed; that the localities were such, that they could not be understood from any plan or model; and that much of the evidence would relate to details connected with the construction of the building and the complicated connection of its various parts, which it was of the utmost consequence should be correctly apprehended by the jury. — That, perhaps the Court, if they deemed the motion a

expressed no dissent,) — upon the point of the legal presumption attaching to secret homicides.

proper one, would assign some interval for attending to it, when no time might be lost from the regular hours of proceeding.

Mr. Sohier. We are not aware of any necessity for a view at the present stage of the case; nor are we certain that any will be at all needed. The Government have some excellent plans of the Medical College in readiness, as we happen to know, from having duplicates from the same surveyor, Mr. Bryant; and perhaps they will be able to furnish a more complete representation of it by means of a model. After introducing their testimony in part, we shall be better able to judge of the need of further personal observation.

The Chief Justice remarked, that there was no doubt of the authority of the Court to grant a view, if they deemed one expedient. Views had been granted of late in several capital cases. He could now recollect the instance of *Washington Goode's* case, tried last year, and of a case of Arson, the name of which he could not call to mind, which occurred three or four years before, in this county. The Court would consider of the application; and if the progress of the trial seemed to develop a necessity for a more immediate and personal inspection of the Medical College, it would be permitted at some time when the Court were not actively engaged; — perhaps to-morrow morning, before the opening.*

Mr. Bemis having proceeded to call the witnesses for the Government, Mr. Sohier moved that all except the witness actually testifying, should be removed from the court-room. The counsel for the Commonwealth having intimated that they had no objections to the course, provided the order were made applicable also to the witnesses for the defence, and that an exception should be made in favor of the medical and scientific witnesses, the Court ordered that all the witnesses on both sides, except the class last named, should withdraw to an adjoining room till sent for.

Before commencing the examination, the Court intimated,

* Prior to the Revised Statutes, the Court considered that a view should seldom, if ever, be permitted in a capital case; and then, without the presence of any other person than the officer in attendance. *Knapp's Case*, 9 Pick. 495. *Parker's Case*, 2 Pick. 550. But by the Revised Statutes, Chap. 137, § 10, "the Court may order a view by any jury empanelled to try a criminal case."

The case referred to by the Chief Justice, of the view on the trial for arson, was doubtless that of *Edmund Hollihan*, tried in December, 1845. Two other views in capital cases, besides those named, have also been granted in this county, within the last two years: — in *Joseph Jewell's* case, tried May, 1848; and in *Augustus Dutee's*, tried in July, of the same year. In all these instances, counsel, or some other representative of each party, attended the jury, by permission of the Court.

in reply to an inquiry on the part of the prosecution, that witnesses would be expected to be examined to the extent of their knowledge upon all points of inquiry, and should not be examined in part, merely, at one stage, with a view to being recalled to other points, at a subsequent stage.

CHARLES M. KINGSLEY, *sworn, — examined by Mr. Bemis.* I was agent for Dr. George Parkman, and had been such from May or June, 1836, till the time of his decease. I had the care of his real estate, and used to see him every day, and sometimes three or four times a day, while I was his agent. I always made it a point, to see him at least once a day. The Doctor owned many estates at the west end, comprising the principal part of the neighborhood around the Medical College, and near where I live, in Blossom street. He owned all around me, and frequently called on me at my house.

I remember the day of his disappearance. He was first missed, Friday, Nov. 23d, 1849. I wanted to see him on the afternoon of that day, and called at his house, No. 8 Walnut street, a little before three o'clock. I had seen him the day before, Thursday, and had been with him most of the day. I called on him, Friday, to get an answer about a lease. I did not find him at home, as I expected, though it was immediately after his usual time of dining, half-past two. He was usually very punctual in his habits, and about his hour of dining. I had never been disappointed before in meeting him at that hour: I suppose I have called on him at least fifty times a year during my fourteen years' agency, at that hour.

Not finding him at home, I left word where I could be found that afternoon, if he wished to see me. Not hearing from him that night, I called again at the house, early next morning. I found that he had not returned, and that the family were very anxious about him. They requested me to make search for him. One or two modes of making general inquiries were talked of; but it was concluded not to make a public search, till after the morning railroad-trains would generally be in: — about two o'clock. I made an appointment to call at the house at that hour; went there at a quarter before two; and the Doctor not having returned, I commenced inquiring for him immediately.

I was told that he had made an engagement with somebody, (it was not known whom,) for half-past one; and I commenced by finding out who that person was.

I supposed that it would be the best plan to trace the Doctor from the time of his last leaving his house, at twelve o'clock,

Friday. I accordingly commenced inquiring of every body whom I met, who I supposed would be likely to know him, when they last saw him. I first got trace of him in Bromfield street, at half-past twelve. Thence I traced him into Washington street, up Williams' Court into Court Square and Massachusetts Block, thence down Cornhill-Avenue by Joy's Building into Washington street again, thence through Water and Devonshire streets to the Post-Office, thence up State through Court street into Green street, down through Eaton street into Vine street, at the corner of Blossom street. There, in Paul Holland's grocery-store, I learned that he had left a bag of green lettuce the day before. When I went in to inquire there, the boy asked me to take away the lettuce. He told me — [The further statements made by the boy checked.] I next heard of Dr. Parkman in Fruit street, leading from Blossom to Grove street, and then traced him as far as the Medical College.

By this time there was great excitement in the neighborhood. Many of the neighbors, and officer Trenholm assisted in the search. We continued our search till eleven o'clock that night. I cannot say when the police were called in to aid, but think that it was as early as two or three o'clock that afternoon; as I remember that I was told that two of the police had called at my house before I got back, after going up to Dr. Parkman's house. As many as twelve or fifteen of the neighbors accompanied and aided me in making inquiries, &c. In the evening, the police searched a great many houses in the neighborhood of the college; particularly the cellars and rear apartments of empty tenements. I aided in searching five or six, myself.

The first advertisement in the newspapers was published that afternoon, Saturday. I saw it in one paper, the Evening Journal, I think. On Sunday, we searched about the city all the forenoon. In the afternoon, we heard a story of his being at East Cambridge, and the officers went over there about half-past four. I did not go over till a half an hour or more after they had gone. Sunday afternoon, many persons searched about the new-jail lands, and the Doctor's vacant houses.

Monday, I again went over to East Cambridge, and stayed there, making inquiries, &c., till ten or eleven o'clock. When I returned, I went down with Mr. Starkweather, the police officer, to examine the Medical College. We went all over the building, into the lecture and dissecting-rooms, and up into the attic, but did not go into the cellar. We looked into the large vault or receptacle used for the purposes of the dis-

secting-room. I think it was locked, and that Mr. Littlefield, the janitor, got the key and opened it for us. Dr. Ainsworth was also present. We came to Professor Webster's lecture-room, about quarter or half-past eleven, after looking over the other apartments. We found the door locked, and knocked. Mr. Littlefield was there at the time, I believe; he was there, at any rate, while we were waiting, and when we got admitted. We knocked a second time; and then Starkweather and I turned to go down the stairs leading into the lower story occupied by Mr. Littlefield. Littlefield said that the Doctor was in there, and that we could get in that way, and he would try to rouse him. He accordingly took hold of the door and shook it severely.

At this point, at two o'clock, P. M., the court adjourned till half-past three, P. M.

Tuesday, P. M., March 19th.

The Court came in at half-past three o'clock, pursuant to adjournment.

CHARLES M. KINGSLEY, *resumes.* — After knocking at Professor Webster's door, perhaps two minutes or so, the second time, he came to the door and unlocked it. I think that there is but one lock on the door. Mr. Littlefield told the Professor, that we had come there to see if we could get any clue to Dr. Parkman. I did not hear any reply from Professor Webster, if he made any. We went into the lecture-room, thence into the back room, and then down into the lower laboratory. We made but little examination; did n't move anything in the laboratory. I do n't know whether Dr. Webster accompanied us down stairs, but think that he did, following us. He did not say anything, or if he did, it was to Littlefield, behind us. I went back again to East Cambridge after getting through the visit at the Medical College, and stayed there till about dark.

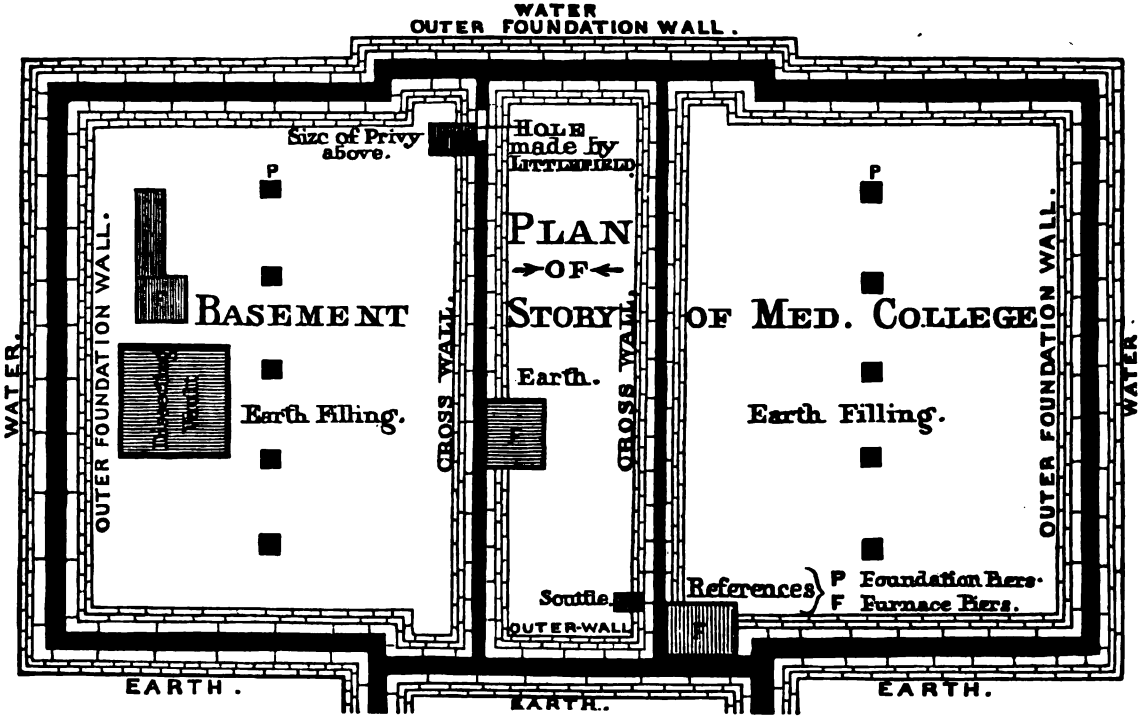
The next day, Tuesday the 27th, officers Clapp, Rice, and Fuller, accompanied me on another visit to the Medical College, at about ten, A. M. Mr. Littlefield was with us. I think we had inquired for him before searching his apartments, which we did before going into Dr. Webster's. We made a thorough search in Mr. Littlefield's part of the building, of every room and the closets. He was in and out while the search was going on; but when his back was turned, I took occasion to look into private places, such as between the leaves of books, &c., to see if I could see any papers in Dr. Parkman's hand-writing, or any money; also into his panta-

loons' pocket, hanging up in a clothes'-press. We looked under the beds, also, and into them. After leaving Littlefield's apartments, we went down through a small trap-door into the cellar under the building. Messrs. Fuller and Rice went with Mr. Littlefield out to the back wall, but I did not go with them, and do not know what they saw or did.

We then went up to Dr. Webster's apartments and knocked, as we had done the day before; but he did not keep us so long a-waiting, as then. Mr. Littlefield tried to get in, but could not. I don't remember whether he tried his key in the door and found it bolted, or why it was that he could n't get in. Dr. Webster came to the door. Mr. Clapp made excuses for calling on him. He said, that we had come to the College first, so that we might say, when we went to houses in the neighborhood, that we had been there. Mr. Clapp was very polite to Professor Webster; gave him to understand, that nothing would be moved; that there was no suspicion of him; and that we were obliged to come and look into his apartments among the rest. The Doctor said, that we could "look round if we wished to," or something of that sort. We walked through the lecture-room into the back room, and then Mr. Clapp made a motion as if to go into the back private room. [The witness here explained to the jury, as well as he could, the relative position of the different apartments occupied by Professor Webster.] When Mr. Clapp made this motion, Professor Webster told him that he kept his valuable and dangerous articles in that room; and Mr. Clapp, after having just put his head inside the door, said he should n't go in there to get blown up. We then went down into the lower laboratory.

Before going down there, however, while Mr. Clapp was talking with Professor Webster, I put my foot into the ashes of a small furnace in the Professor's private room, and poked out some of the ashes, to see if I could discover anything in them. I did this at the suggestion of Mr. Fuller, the iron-founder, who had advised me that day, before going into the College, to look among the ashes in all the fire-places, in order to see if I could not find anything like buttons, or other suspicious articles. There was no fire at the time in the stove, and I drew the ashes out upon the hearth.

We then went down into the lower laboratory. I went up to the furnace there, (the same in which the bones were afterwards found,) and, looking under the grate, saw the bright light of a fire, and the ashes underneath all swept up. I think Professor Webster was talking with Mr. Clapp at this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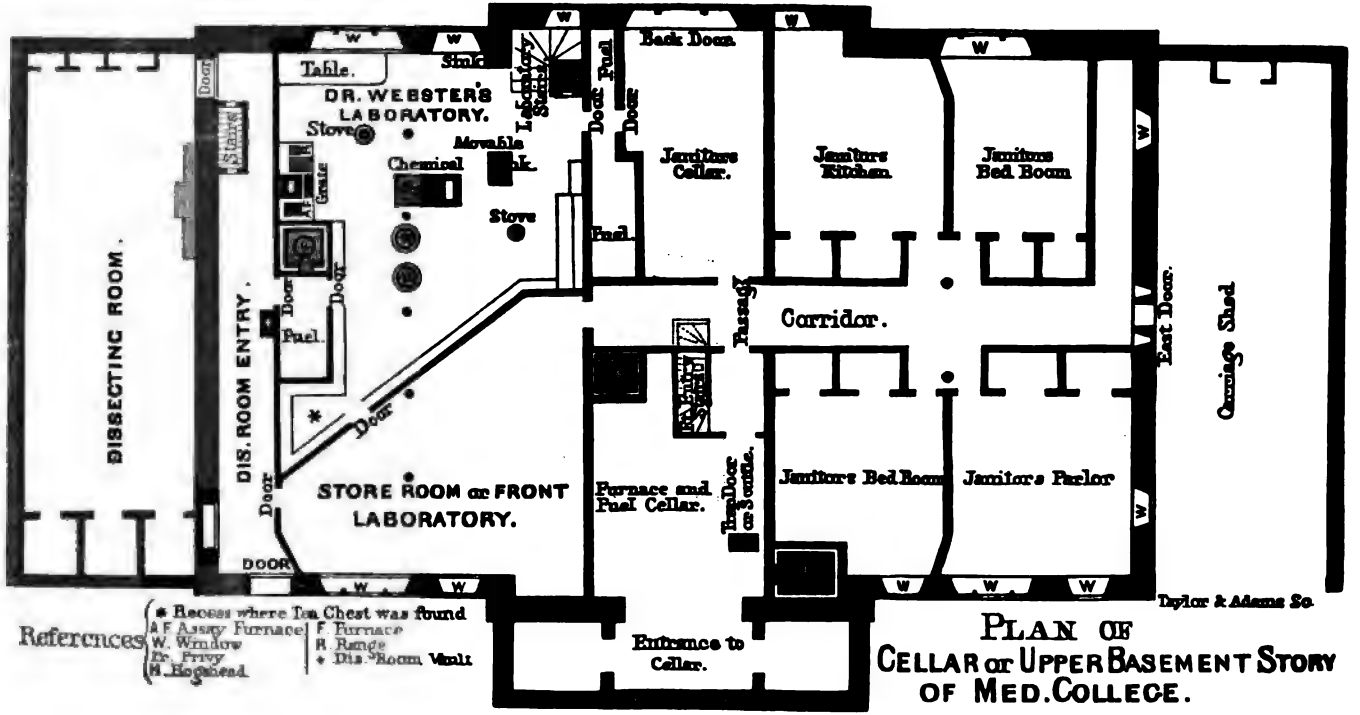
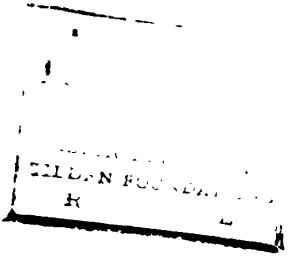
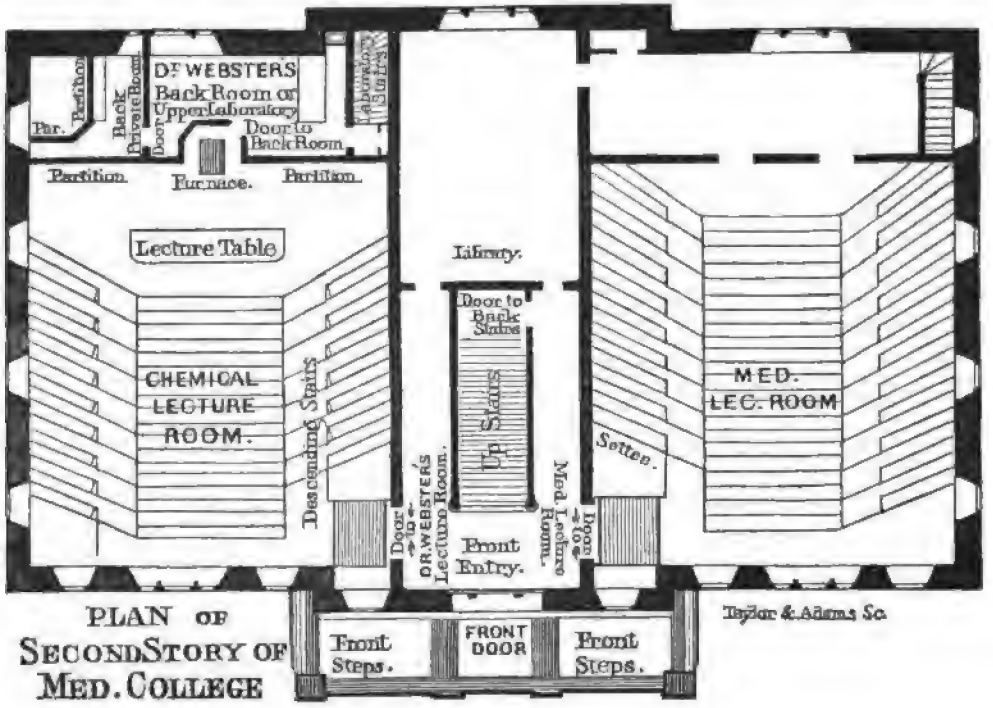


PLAN OF CELLAR or UPPER BASEMENT STORY OF MED. COLLEGE.





PLAN OF
SECOND STORY OF
MED. COLLEGE

time, at the bench by the window. They two did all the talking. We went out to the southwest corner of the room, and there was a considerable lot of rubbish. I saw a tea-chest there with some tan in it, and some minerals on top of the tan. The stones filled up the tea-chest. The officers took up some of the minerals and spoke about them. I remarked about it afterwards, and remember the fact of seeing the tea-chest with tan in it, distinctly. A question was asked, while we were there, about the privy. Clapp inquired, "what door that was?" pointing to the privy; and Littlefield said, that that was the Doctor's private privy, and that he had the key to it. Either Dr. Webster, or some one else, then called attention to the other side of the room.

I noticed, when we went down the stairs into the laboratory, that they were wet, as if water had been spilled on them. I had noticed the same thing the day before, and thought of it this day, (Tuesday,) because they did not seem to have dried.

I think we went out into the dissecting-room entry, and that Dr. Webster shut the door after us. I don't remember hearing him lock it.

We made no more thorough search on this occasion, because the officers had no suspicion of anybody in the College; and, as Mr. Clapp had told Dr. Webster, we were not going to turn over anything. I thought that they rather laughed at me, for my suspicions in regard to the College. Besides, I had no orders to make search, as Mr. Clapp had, from the City Marshal.

After Tuesday, the search for Dr. Parkman was continued by myself and others, till Friday night. I think, however, that it was not prosecuted so vigorously on Wednesday afternoon, and Thursday, (Thanksgiving-day,) as it had been before. Rewards were offered. One for $3,000, on Monday, or Tuesday, and one for $1,000, on Wednesday. The handbills containing these were posted up very extensively throughout the city, and sent round to the neighboring towns. No tidings were heard of Dr. Parkman till Friday afternoon. About half-past three or four o'clock of that day, I called at Mr. Littlefield's apartments, in company with officer Starkweather, and inquired of Mr. L.'s wife if he was at home. In consequence of what she said, I went round to the front door and rang the door-bell, and presently Mr. Littlefield came out from his apartments and round to where we were, with his overalls on, and covered with mortar and dirt. I had been informed, a few minutes before, of his having bor-

rowed a bar and tools to dig through a wall, and I was determined to find out what he was about. Before ringing, I put my ear to the wall, and could hear a clink, as if somebody were working on a brick wall inside of the building. We talked together a few minutes, and I satisfied myself that he was at work on the wall. Littlefield went back, and we went off to the Marshal's office.

I was not at the jail, when Professor Webster was first brought in from Cambridge that night, Friday, after his arrest; but went down there subsequently, about ten o'clock, in company with S. D. Parker, Esq., Dr. Martin Gay, and others. When I went in, Dr. Webster was in the lower lock-up, underneath the jail-office, lying on the bed, with his face downwards. He was asked to get up: he said that he was not able to. He appeared to be in a state of great agitation and prostration. Dr. Gay tried to get him up and compose him. After being in the cell some five or ten minutes, they were able to get him up. When they raised him up, his head hung down, and he was in a great perspiration and state of excitement; so much so, that I thought he would not live. They carried him up stairs into the office, and he asked for water. He attempted to drink, but could not. I held the tumbler to him, but he could not take hold of it. He bit at it, and struck his face against it, and spilt the water all over him. Dr. Gay held it once for him, and he snapped at it as before. He sat in the chair, so poorly supporting himself, that once or twice I thought he would fall out of it. I never saw a person in such a condition before: — one who had so little control of himself. He trembled, and was convulsed. I cannot say that it was like *delirium tremens*, as I have never seen a case of that; nor do I know what it was like.

He wanted to have word sent to his family, as they would not know where he was; also to Mr. William H. Prescott, and Mr. Franklin Dexter. He mentioned his family a great many times. Mr. Parker spoke, and said that there was another family that had been in great distress for a week; that, perhaps, he could explain certain things at the Medical College, which would relieve that family. Mr. Parker told him that he could go down there, or not, as he pleased; that we were going there, and he could accompany us, if he saw fit. He said that he had nothing to explain, and would go with us. The officers helped him into the coach.

I do n't recollect whether he was perspiring at this time; but down in the lock-up, I remember some one's making a remark, (I think it was Dr. Gay,) when he saw him perspir-

ing so, about the coldness of the cell; to which Dr. Webster replied, that his extremities were freezing.

The party in the coach with Dr. Webster, went down to the Medical College. I ran down there, by myself, first stopping at my house. I arrived there just as the party had got into the Professor's back room, up stairs. Two of the officers accompanied him, holding him up, one on each side. They proposed to open the back private room, and inquiry was made for the key. Prof. Webster said that Mr. Clapp had taken it from him with his other keys. The door was then forced. The key for the privy-door down stairs, was asked for. The Professor said that it hung up on a nail at the end of the shelf. A key was found; and I think that Mr. Littlefield and Mr. Starkweather went down to try it. They came back, saying that it did not fit; and Dr. Webster said that some one, then, had taken it away. We then went down stairs into the laboratory, and the privy-door under the stairs was broken open.

We stayed in the laboratory some ten or fifteen minutes. I remember hearing something said there about the bones being found in the furnace, and a request being made to let every thing stay as it was, till the coroner's jury should meet. We went from the laboratory out to the trap-door, which affords an entrance under the building. Some of the party went down and handed up parts of a human body: — a pelvis, the right thigh, and right leg; I think it was the right thigh and right leg. They were brought out and placed where Professor Webster could see them, upon a board. I did not hear him make any remark about them. He appeared about the same as before, a good deal excited, and had to be supported by the officers. He stood some eight or nine feet distant from the parts of the body. After looking at them some little time, the party turned away, and Dr. Webster was taken back to the carriage and the jail.

I was at the Medical College, the next afternoon, (Saturday,) when other parts of the body were found. We were searching the premises, and I was in the upper laboratory, or back room, when I was called by some one down below, saying that they had made further discoveries. I went down, and officer Fuller and some others were then drawing a tea-chest out into the floor, to overturn it. They turned it over, and the thorax and thigh came out imbedded in tan. The thigh was inside of the ribs, put in so that the ends of the ribs had left marks upon it. This was the left thigh. A large knife fell out of the tan; I should call it a jack-knife.

A string went round the body and leg, for the purpose, as it seemed, of lashing them together. These limbs were taken out and washed, and put with the others, and given into the charge of the officers. I saw the medical gentlemen examining them, Sunday.

I was at the Medical College, Sunday afternoon, when a pair of slippers and pantaloons, with spots of blood on them, were found by officers Butman and Heath. Dr. C. T. Jackson was also present. Mr. Butman found the pants in a clothes'-press, at the head of the stairs leading to the laboratory. Dr. Jackson directed that they should be kept carefully, in order that Dr. Wyman might examine whether they had blood upon them; and they were wrapt up in paper, and, I think, Mr. Butman took charge of them. A large knife, with a silver sheath or handle, was also found by officer Heath, Sunday afternoon, when I was present. I was also there when a saw was found, with something on the handle, looking like prints of blood; a hand-saw, some twelve or fifteen inches long.

I was present when the limbs were put together, by Dr. Lewis. I think it was on Monday morning. The general appearance of the body was that of Dr. Parkman. He was tall, and very slim. I should say, about five feet, ten and a half inches, high. He was straight, and small over the hips. He was light complexioned; his hair, sandy; his under jaw was prominent. I should not like to say positively, that the parts of the body which I saw were Dr. Parkman's.

[Objection was here made to a question put by Mr. Bemis, whether the witness had ever known Dr. Parkman to use profane language. On the statement being made, that it was proposed to connect the testimony with the witness's own actions, or to implicate the defendant in an untrue statement, as would hereafter be proved, the objection was waived.] I have heard Dr. Parkman use severe language, but never, a profane word; and I have seen him under circumstances calculated to produce the greatest excitement.

I remember hearing Professor Webster remind Mr. Littlefield that it was time, or nearly time, to ring the bell for lecture, when we were at the Medical College, on the Tuesday's examination before the arrest.

Cross-examined by Mr. Sohier. — The morning after the arrest, I searched Professor Webster's house at Cambridge, in company with officers Clapp and Spurr, and officer Sanderson, of Cambridge. I made a second search, there, about the

12th of December. We had a search-warrant on the first occasion, but not on the second. Mr. Starkweather was with me the last time.

Dr. Parkman would use plain language in talking with people, who, he thought, had dealt dishonestly with him. If a man had acted knavishly towards him, he would n't hesitate to tell him so; but I never heard him use a profane word. I never heard him use harsh language in asking for payment of money, when treated with civility.

Mr. Clapp and the other officers took up some of the minerals and examined them out of curiosity, on the occasion of the Tuesday's visit to Dr. Webster's apartments. The minerals were all about the vicinity of the tea-chest; on the shelves and the boxes. I can't say whether any were taken from the chest itself. I think Dr. Webster spoke of ringing the bell for lecture, Tuesday, just as we were going out. I observed the fire in the furnace before looking at the minerals; also before going to the privy. I think that Dr. Webster stood, at the time I looked under the grate, by the bench near the window, and was talking with Mr. Clapp.

The door of the small back private room was open, when Mr. Clapp put his head in: — far enough open, for me to have seen the bottles on the shelves. Professor Webster let us into the lecture-room himself, when we knocked. Mr. Littlefield knocked. I do n't know that there was anything peculiar about the knock. I do n't remember the conversation which occurred in the lecture-room. We did n't remain there but some two or three minutes. Dr. Ainsworth was with us some part of the time. I can't tell who produced the key to the receptacle when we looked in there. Monday, Dr. Webster was in his working-dress, with a pair of overalls on, or an apron and a cap on. It was the same with him, Tuesday. When we knocked the first time, Tuesday, Littlefield left us for something, and went down stairs. In coming back, he met us just as we were going down stairs, and told us that Dr. Webster was in there, and he could make him hear, and then gave the knocks, as I have before spoken of.

I only traced Dr. Parkman to the Medical College by inquiries; no other way. I do n't know what became of the tan in the tea-chest. I did n't examine it to see if it contained blood. I am positive that I saw tan in the tea-chest, and minerals on top of it. The saw which I have spoken of, was a carpenter's fine hand-saw, with a ridge on the back of it; such as butchers use for sawing bones. I examined the knife found in the tea-chest, and saw rusty spots on it. I do n't

know whether it was from blood or not. On the knife found up stairs, the Turkish knife or yataghan, there were very slight marks, supposed to be blood.

PATRICK MCGOWAN, *sworn, — examined by Mr. Bemis.* I was the house-servant of the late Dr. George Parkman, and now live with Mrs. Parkman. I have lived with the family, since the 16th of September last.

I remember the day of the Doctor's disappearance. Somebody called at the house that morning, and inquired for the Doctor. I did n't know the person, and he did n't give me his address. I think that I should not know the person, if I saw him. I can't say that it was the prisoner. He called between eight and nine, I should think. I do not recollect any other person's calling about that time in the morning. The Doctor was crossing the entry from the breakfast-room at the time of the person's calling, and stepped to the door. I heard something said about the Doctor's meeting the person, or answering the question, if he would meet him at some place, at half-past one o'clock; and I understood the Doctor to answer, "yes," that "he would meet him there."

I last saw the Doctor, about eleven o'clock, that day, and have never seen him since.

He was very punctual at his meals. I never knew him absent from dinner, at the regular hour, but once, while I lived there; and then he came in before the family had finished.

Cross-examined by Mr. Sohier. — The Doctor kept no other man-servant while I was there. I attended the door that morning. Some other persons called during the course of the morning; not many. I did not tell any of them, that the Doctor had gone out of town for the day.

ROBERT G. SHAW, *sworn, — examined by Mr. Clifford.* I am the brother-in-law of the late Dr. George Parkman. He would have been sixty years old in February following his decease. He was well acquainted with the defendant; but for how many years he had been so, I am unable to say. The first that I knew of his lending Dr. Webster money, was when I told him of his having sold me his minerals.

The last time that I saw Dr. Parkman, was on the day of his disappearance. He called at my house between nine and ten o'clock in the morning of that day, and we walked down to State street together. He appeared to be in very good health and good spirits. We parted about ten o'clock, at the Merchants' Bank.

Saturday morning, (the next day,) Mrs. Parkman sent for me, and I went in and found her in great distress, from the absence of her husband, who had not been home since yesterday. I went from the house directly to his brother's, the Rev. Dr. Francis Parkman, (also my brother-in-law,) and informed him of the Doctor's absence, and thence to Mr. Edward Blake's office in Court street, my nephew, to concert means for making inquiries for him. There was some suspicion on our minds, at first, in regard to a man who had been punished for stealing from the Doctor's house; and we sent to the attorney who had defended him, and found that that man was away from the city, and had not been in it recently. We then went to the City Marshal's, between ten and twelve o'clock, and engaged him to have inquiries made through the police. That evening, an advertisement was inserted in the newspapers by my direction, giving notice of the Doctor's disappearance. I offered a reward subsequently, of $3,000, for information in regard to him, and one of $1,000, for the discovery of his body. I don't remember the days on which they were advertised. During the whole week succeeding, I was consulted, and took an active interest in the investigations.

I knew of the discovery of the remains, on the night of the 30th of November; have seen them since they were arranged and put together. [The Attorney General having here asked the witness, "whose body, in his opinion, the remains constituted a part of?" and objection having been made by the counsel for the defence, to the question being answered, the Court intimated that the inquiry would be proper, if put in the shape, "what appearances, if any, did the witness observe, showing a resemblance to any person?"— antecedent to the statement of his opinion.] I saw appearances about these remains, which induced me to believe them to belong to the body of Dr. George Parkman. These were principally the color and kind of hair, on his breast and leg, which exactly corresponded with what I had seen. The hair upon his breast, I had seen previously; but that on his leg, I had seen in November last; not a great while before his disappearance. He came to my house early one morning, — a cold morning, — without any surtout; and to my remark, "that he was n't dressed warm enough," he replied, that he had not on even drawers, and pulled up his pantaloons to show it. I have seen him open his breast in such a way as to show how much it was covered with hair, before. I could not identify the leg, so well from the complexion of the hair, as the breast. The form, size, and

height, of the parts, corresponded to Dr. Parkman. There was nothing about them *dissimilar* from him.

I saw the teeth which were found. I am knowing to the fact of his wearing false teeth.

I finally took charge of the remains, to have them entombed, as those of Dr. Parkman, and they were so buried.

As to my financial relations with Dr. Webster, so far as they were also connected with Dr. Parkman: — I received a note from the defendant, about the 18th or 19th of April, 1848, asking for a private interview. I appointed the next morning. He came and informed me of his embarrassments, and said that he expected the sheriff would seize his furniture, if he could n't raise a certain sum to pay off a pressing demand which had been long standing; — I think, a year. He then proposed to sell me a cabinet of minerals. I told him that I did not want them. He said that I might like to make a donation of them to some institution; that he would sell them to me for $1,200. I refused; but he pressed me so hard, and worked upon my feelings so much, that I concluded to aid him. I asked him "how much he needed?" and he said that $600 would relieve him for the present. I told him that if he could get my note discounted for that amount, at some bank which he named, I would buy his minerals. In the course of the morning, he called and said that he could get it discounted, — at the Charles River Bank, — I think; and I let him have my note, for which I took *this* receipt, dated April 20th. [Receipt produced.] He shortly after brought me a catalogue, and bill of sale of the minerals, which I put on file, without examining. On the 6th of June, he called on me again, and I gave him a check for $200; and, again, on the 3d of August, one for $400; for which also I have his receipts. [Produced.] He then said that there were some of the minerals included in the catalogue, which he should like to keep, if I had no objection. I told him that if he would pay the interest, as it fell due, he could do so. He did not, however, pay it, and I have never called upon him for it.

Subsequently to this, I was walking with Dr. Parkman one day in Mount Vernon street, when we met Dr. Webster. I asked Dr. Parkman, after we passed, what salary Dr. Webster was receiving at Cambridge.* He replied, $1,200. I then said, "that is not half enough to support his family," and

* This evidence was objected to by counsel for the defence; but as its purport was all before them in the transcript of the coroner's minutes, and as its introduction was really desirable in one aspect of the defence, the objection was not pressed, and the witness was allowed to proceed in his own way.

went on to speak of his application to me for money, and of his sale to me of his minerals. Dr. Parkman thereupon said, "they are not his to sell; I have a mortgage on them, and if you will come to my house, I will show it to you." He took me to his house; and on comparing his mortgage with my bill of sale, they corresponded throughout. He then said that he would see Dr. Webster, and give him a piece of his mind; that it was a downright fraud, and he ought to be punished.

[The mortgage was here produced by the witness, and read to the Court and jury, by Mr. Bemis. It bore date, January 22d, 1847, and ran from John W. Webster to George Parkman. It embraced in its terms, "all my personal property, including, among all other, my whole household furniture, all my books, minerals, and other objects of natural history and knowledge, and all utensils and apparatus of chymistry, mineralogy, and geology; including with the rest, all articles, a schedule of which may be delivered with, or appended to, these Presents; and wherever the said property may be, whether in said Cambridge, Boston, or elsewhere." Its condition was for the payment of $2,432, in four years from date, according to the tenor of the note accompanying it; and it had been recorded in the Cambridge City Registry, February 13th, 1847.]

Dr. Webster, after this, wrote me a long letter of explanation, (as I suppose,) which I never read; my eyes being poor, I laid it away after opening it, and no one else saw it. At a subsequent period, I was told that Dr. Webster was proposing to give his minerals to Harvard College, on a certain sum being made up by subscription to enable him to do so. The subscription-paper for that object was handed to me; and I put my name down for $500, on the understanding, that so much of my debt, should be reckoned as a subscription. The requisite amount was raised; and soon after, a Mr. Smith called on me from Dr. Webster, and paid me the balance of my debt. I then told him to take back the letter and bill of sale, &c., to Dr. Webster, and to tell him that I was perfectly satisfied. I know that Dr. Parkman was not paid off by this arrangement.

Dr. Parkman left a wife, and two children, — a son, and a daughter. The daughter has been an invalid for several years. I know that he was always anxious to procure delicacies for her, suitable to her state of health.

He was the most punctual man that I ever knew. I should call him over-punctual. He was also a very domestic man.

Nothing would induce him to stay away from home, twenty-four hours, if he could avoid it.

Cross-examined by Mr. Sohier. — The Doctor's punctuality extended to every thing; — business-appointments, as well as others. He was so particular, as to be in the habit of fixing beforehand, to his family, the hour of his return.

If I had not known of Dr. Parkman's being missed, I should not have been led to suppose that the parts of the body found, were his. The fact of his disappearance had as much to do with my opinion, as the color of his hair.

Direct, again. — I received the mortgage which I produced, from Mrs. Parkman, a day or two before I testified to the coroner's jury.

It being now seven o'clock, the Court directed an adjournment; and at the same time signified that the jury would be permitted to take a view of the Medical College, attended by two officers, and one counsel on each side; and that this view might be had, previously to the hour of meeting to-morrow morning.

It was arranged that Mr. Bemis should attend on the part of the Government, and Mr. Sohier on the part of the defence, and that the jury should reach the Medical College, (distant about half a mile from the Court-House,) at eight o'clock, and return into court as soon after nine as might be.

SECOND DAY. — *Wednesday, March 20th.*

The jury having returned from their view at a quarter of ten, this morning, and answered to the call of their names, the trial proceeded.

Francis Tukey, *sworn, — examined by Mr. Bemis.* I am the City Marshal of this city, and as such, have partially the superintendence and direction of the police.

I was first made acquainted with the disappearance of Dr. George Parkman, on Saturday, Nov. 24th. Mr. Edward Blake called at my office, that day, at ten o'clock in the forenoon, and requested me to have inquiries instituted for him.

At Mr. Blake's request, I went to his office, and there met Mr. Robert G. Shaw, to concert the best measures which could be taken. I advised to have the police officers at the west end of the city informed of his disappearance, and to make

such inquiries for him as they could, without making unnecessary publicity. If they should hear nothing of him before two in the afternoon, then I could communicate word to the police generally, and have investigation made throughout the city. I accordingly sent for the police officers on the west station, and directed them to make inquiry, in a private way, for Dr. Parkman, and to institute such search as they could, in his unoccupied houses, by pretending an errand about drains, nuisances, and the like. At two o'clock, I got no further information, than that he was last seen, Friday, in the neighborhood of the Medical College; and Messrs. Blake and Shaw called to tell me, that no intelligence had been obtained of him, and that they wanted the whole police notified of his absence. I did so, and at the same time advised the insertion of an advertisement in the evening papers, of his absence. It was, accordingly, inserted in the Transcript and Journal; I know, at least, that it was inserted in the Journal, for I remember telling the reporter of that paper of it, who happened to be in my office at the time.

[The Court here intimated, that it seemed unnecessary to go into more extended proof of the fact of the disappearance of Dr. Parkman. The counsel for the prosecution stated that they did not propose to press that point further, but that they were desirous to show, in a general way, by this witness, who had the more immediate superintendence of the search for the deceased, how extensive and minute that search had been.]

I should say that it would have been impossible, with the means which I had at command, to make a more extensive and particular search, than was made, to discover the whereabouts of Dr. Parkman; both *in* the city, and *out* of the city. Messengers were sent in all directions, for fifty or sixty miles, to the towns in the country, and to towns all up and down the sea-coast, including both sides of the Cape. We searched over land and water, and under the water. The river and harbor were dragged. And every report that we could hear of him, far or near, we sent and had investigated. We published and circulated, among other things, 28,000 hand-bills, of four different notices, of which the following are copies. [Produced and read to the jury.]

SPECIAL NOTICE.

GEORGE PARKMAN, M. D., a well known, and highly respectable citizen of Boston, left his house in Walnut street, to meet an engagement of business, on Friday last, November 23d, between twelve and one o'clock, P. M., and was

seen in the southerly part of the city, in and near Washington street, in conversation with some persons, at about five o'clock of the afternoon of the same day.

Any person who can give information relative to him, that may lead to his discovery, is earnestly requested to communicate the same, immediately, to the City Marshal, for which he shall be liberally rewarded.

Boston, November 25th, 1849.

$3,000 REWARD.

Dr. George Parkman, a well known citizen of Boston, left his residence, No. 8 Walnut street, on Friday last. He is sixty years of age, about five feet, nine inches high; gray hair, thin face, with a scar under his chin; light complexion, and usually walks very fast. He was dressed in a dark frock-coat, dark pantaloons, purple silk vest, with dark figured black stock, and black hat.

As he may have wandered from home in consequence of some sudden aberration of mind, being perfectly well when he left his house; or, as he had with him a large sum of money, he may have been foully dealt with. The above reward will be paid, for information which will lead to his discovery, if alive; or, for the detection and conviction of the perpetrators, if any injury may have been done to him.

A suitable reward will be paid for the discovery of his body. Robert G. Shaw.

Boston, November 26th, 1849.

Information may be given to the City Marshal.

$100 Reward will be paid for Information which leads to the recovery of a gold double-bottomed lepine turned case-watch, ladies' size, full plate, four-holed jewelled, gold dial, black figures, steel hands, no second hands, no cap.

Marked, F. B. Adams & Sons, St. John street, London. No. 61,351. Francis Tukey, *City Marshal,*
Police Office, City Hall.

Boston, November 27th.

$1,000 REWARD.

Whereas no satisfactory information has been obtained respecting Dr. George Parkman, since the afternoon of Friday last, and fears are entertained that he has been murdered, — the above Reward will be paid for information which leads to the recovery of his body. Robert G. Shaw.

Boston, November 28th, 1849.

Mr. Tukey, resumes. — The suggestion contained in the first hand-bill, that Dr. Parkman had been seen in Washington street, came from a report, which was traced out, and found to be without foundation. This bears date, Sunday morning, and was published, at the instance of Messrs. Shaw and Blake. The second is dated the next day, Monday, and is Mr. Shaw's reward of $3,000. The third, dated the 27th, is for a watch, descriptive of such a watch as Dr. Parkman was known to have had about him. And the fourth, is Mr. Shaw's reward of $1,000 for the discovery of the body. Besides the circulation given to these, in the shape of hand-bills, they were published as advertisements in all the Boston newspapers. The search for the deceased was prosecuted till the remains were found.

I heard of the discovery of the remains, on Friday, November 30th. Mr. Kingsley, and Mr. Blake, and Mr. G. M. Thatcher were in my office, when Dr. H. J. Bigelow called, and informed me of Mr. Littlefield's discovery. I put a revolver into my pocket, and immediately started to meet Mr. Littlefield at Mr. Robert G. Shaw, Jr.'s, in Summer street, and go from thence to the Medical College. I sent to have Mr. Clapp and Mr. Spurr meet me there, and went down in company with Dr. Bigelow and Mr. Littlefield. When we arrived, we found the other officers, and Mr. Trenholm, another police officer, there. From Mr. Littlefield's apartments, we went into the cellar, and thence down through the trap-door, into the basement.

[Here a model, in wood, capable of being taken apart, and intended to exhibit, in miniature, a fac simile of the interior of the College, as also drawings of the several apartments connected with the case, were exhibited, to aid the witness's explanations. They were carefully examined by the Bench, and some explanations asked.]

Witness resumes. — After descending through the trap-door, we crawled along upon the ground underneath the floor, some sixty feet, to the back or north wall of the building, and there, where the cross wall meets the back wall at right angles, and within a foot or two of the back wall, was a hole pierced through the cross wall, about eighteen inches square, and large enough to admit a man's body. The bricks and mortar lay around, as if freshly broken out. We had a lamp with us, and I asked Col. Clapp to pass it through, and see what could be seen. He looked in, and said that there were parts of a human body; and I also looked in, and saw, as I thought,

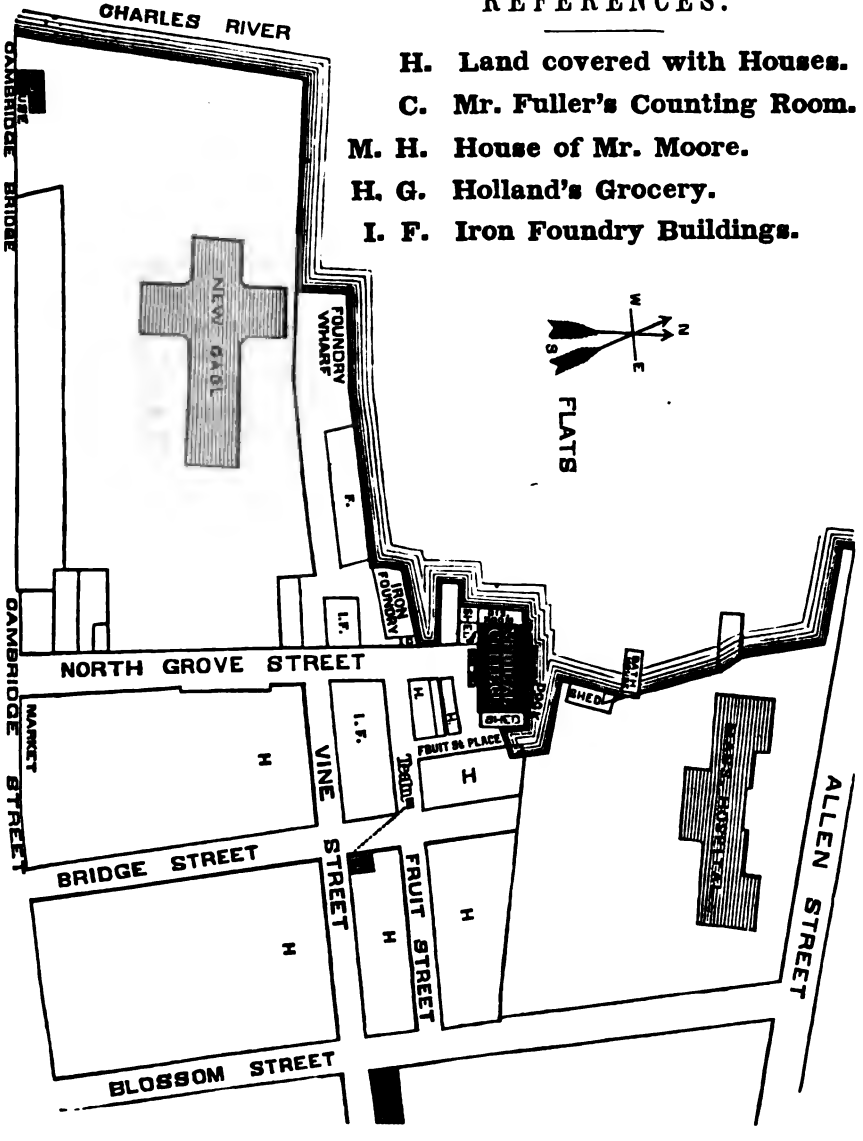
several pieces of human flesh. The water from the sink was running down and spattering over them.

I asked Trenholm and Littlefield to go in, and pass out what they could find. We got a board, and they passed out three or four pieces of a body, — a pelvis, a thigh and a leg. I asked Dr. Bigelow, as a matter of form, if these were parts of a human body; and he said, yes. I then asked, if they were from a dissecting-room. He said, it was not the place for them. I asked Littlefield, if there was any entrance to this place except through the privy-hole above, and the aperture in the wall through which we had drawn the parts; and he said, no.

While we were down there, we heard some one overhead, and hurried out, saying, "he is overhead," or, "that is Webster." We came out upon the cellar-floor, through the trap-door, and did not see anybody. Dr. Bigelow went into Mr. Littlefield's rooms, and I went into the store-room connected with the laboratory, with my revolver in my hand, while the other officers went into the laboratory to search for Dr. Webster, or whoever it might be. I remained where I was, till the other officers returned, and said, that they could not find any one; — they had searched the lecture-room all under the seats, and could not find him. We then all went into the laboratory.

I went near the furnace, whence the bones were taken, and recollect hearing the cover stir, and seeing something in Col. Clapp's hands. I looked at it, and saw that it was a cinder or piece of slag, with a bone in it. I also saw some other one of the party have something of the kind in his hands. I told them not to touch anything, but to leave all as it was, till the things should be taken possession of, by order of Court. I then sent officers, Clapp, Spurr, and Starkweather, over to Cambridge, to arrest Professor Webster, and bring him into town.

I have had charge of the bones found in the furnace in the laboratory, and also of various other things, which I here produce and identify. [Here Mr. Tukey produced a box containing the bones found in the furnace, which had been examined and assorted by Professor Wyman, as afterwards explained by him in his testimony; also, the knife with the silver sheath, called the yataghan, — a knife, with a silver handle four or five inches long, and a slender blade some eight or ten inches in length, slightly curved, and sharply tapering towards the point.]


REFERENCES.
H. Land covered with Houses.
C. Mr. Fuller's Counting Room.
M. H. House of Mr. Moore.
H. G. Holland's Grocery.
I. F. Iron Foundry Buildings.
CHARLES RIVER
CAMBRIDGE BRIDGE
NEW GAOL
FOUNDRY WHARF
FLATS
W
N
S
E
F.
IRON FOUNDRY
I.F.
NORTH GROVE STREET
CAMBRIDGE STREET
MARKET
H
I.F.
H.
H.
FRUIT St PLACE
SHED
SHED
VINE STREET
BRIDGE STREET
FRUIT STREET
H
H
H
H
ALLEN STREET
BLOSSOM STREET

Resumes.—These articles have been in my office, locked up, and the office watched, day and night, since they were discovered. A smaller box, sealed up, containing the teeth, I delivered to Dr. Noble, the dentist, in the Attorney General's presence, and by his direction, on Monday last. After the discovery of the remains, I left the Medical College, and did not return there again that night. I was too unwell to accompany Dr. Webster when he was carried down there.

Cross-examined by Mr. Sohier.—The first notice or handbill, was written Saturday night, I think, and by myself. Some alteration was made by the family before it was published. I think the second one was also submitted to the family, and altered, before it was published. The third, relating to the watch, was mine alone. The last was submitted to the family. As nearly as I can recollect, the privy-hole was not more than eighteen inches or two feet from the rear wall, and the aperture in the cross wall was as close to the angle as one could conveniently work. It was in a line underneath the hole, about half way from the ground to the floor. The remains were not found immediately under the hole. One piece was nearer the rear wall; which, I don't know; nor can I say how far from a precise perpendicular line underneath it, any of them lay. The ground was shelving towards the outer wall, so as to naturally incline them nearer to that wall.

Direct, resumed.—The vault under the privy was not an enclosed one, but the privy-hole opened into all the enclosed space beneath the laboratory, or west wing of the building. The tide seems to flow in and out; but I think that there are no openings through the foundations large enough to let solid substances float through. I noticed that earth adhered to the limbs, as if they had been washed by the tide.

Calvin G. Moore, *sworn,—examined by Mr. Bemis.* I reside at No. 34, Bridge street, in this city, near the corner of Vine street.

I knew Dr. George Parkman. I saw him, on the twenty-third day of November last, in Paul Holland's store, at the corner of Vine and Blossom streets. I went in there, that day, to purchase something, between one and two o'clock, P. M., and while there, Dr. Parkman came in. I should think it was not later, than, twenty to ten minutes of two. I fix the time, because the next day, Saturday, Mr. Kingsley asked me about being in the store, which brought it to my mind that it was the day before. I fix the hour,

because I recollect leaving my house fifteen or twenty minutes past one, and I had been in there fifteen or twenty minutes before the Doctor came in. The Doctor came in from Vine street, bowed, and passed the time of day with Mr. Holland. He made some inquiry about purchasing sugar, and asked, if he had anything to put some up in for him. Mr. Holland pointed to a bucket, and he told him to put some up. He also bought some butter, six pounds, which came to a dollar. The Doctor, after making these purchases, said to me, "We cannot find fault with such weather as this," and passed towards the Blossom-street door. As he went out that door, he made some remark to Mr. Holland, which I did n't hear. He might have been in the store, some five minutes.

Cross-examined by Mr. Sohier.—I was not in business at this time. My house was quite near the store. I went in there to make some purchases myself. I believe I paid for them at the time of making them; am sure, that I did so, before going out. The Doctor was just as he always is. I never saw him slow. I do n't know that I was in a hurry myself. I had been to dinner; dined, not far from half-past twelve. I fix the time of my leaving my house, from the time of my dining, and my movements afterwards. I did not fix it by the clock. When I am not in a hurry, I usually stay in the house, a half an hour, or so, after dinner. I had the impression, the next day, when asked about it, that it was fifteen or twenty minutes past one, when I left my house. I think that I made the statement before the coroner's jury, that it was between one and two o'clock: I do n't know whether I said, "I left my house at fifteen or twenty minutes past one." I had then made this calculation which I have just stated. I first spoke of the interview to Mr. Kingsley, the next afternoon, Saturday, at four or five o'clock. He called to see me about it. I do n't recollect telling him anything, except the fact of seeing the Doctor. I came to the conclusion as to the time, after Mr. Kingsley left. I do n't know whether I have mentioned it to any other person before this.

Martha Moore, *sworn,—examined by Mr. Bemis.* I am wife of Calvin G. Moore, the last witness. Our house is No. 34 Bridge Street, at the corner of Vine street.

I knew Dr. George Parkman by sight. I did not see Dr. Parkman in Bridge street, on Friday, the 23d of November. I recollect telling my son George, on that day,

to go to school, at ten minutes before two. George was standing, at the time, on the sidewalk at the corner of Bridge and Fruit streets, near a truck or team, that was set in the mud. I remember thinking that he would be late at school, and opened the window, and told him that it wanted ten minutes of two. I had just looked at the clock. George heard me, and said that he would go. My attention was called to this occurrence, shortly afterwards, when inquiry was made for Dr. Parkman ; within a week.

Cross-examined by Mr. Sohier.—George attended the Phillips' school, at the head of Centre Street. It begins at two o'clock, P. M. I do n't remember often bidding George not to be late at school. I may have had occasion to do so, at some other times, as is natural when one feels anxious about such a thing. I remember this occasion, by its being talked of shortly after. It might have been within a day or two : I am sure that it was within a week. George told me, when we talked the matter over of Dr. Parkman's disappearance, that he saw the Doctor, " that day that I spoke to him out of the window about going to school." It was the chamber-window, I think, at which I stood. I remember seeing the truck, perfectly ; and am sure that the day was Friday, the 23d. I know it of my own knowledge. I do n't know whom I told it to, first : have told it to the sheriff. I do n't recollect any other occurrence, in particular, that day.

George F. Moore, *sworn,—examined by Mr. Bemis.* I am twelve years old ; am son to Mr. and Mrs. Moore, who have just been testifying.

I knew Dr. George Parkman ; and last saw him, Friday, November 23d. I recollect it, because the news came out the next day, Saturday, and I was at home, because school did not keep but half a day. I saw him in Fruit Street. I was standing alongside of a truck which was stuck in the mud, when he passed by towards Grove Street. [The locality was here called to the attention of the jury, on the plan, and the boy pointed out his own position, that of Dr. Parkman, and the truck.] It was about ten minutes before two, when the Doctor came by. I know, because Mother called to me, and told what time it was, and told me to go to school. There was a boy standing with me, at the time, Dwight Prouty, Jr. I hit him, and said, " There goes Dr. Parkman." The Doctor passed on by the truck ; and we went up to school together, to the Phillips school, at the corner of Centre and Pinckney streets, and got there just before it was "*tardy*," or,

one minute of two. The school is about a quarter of a mile off from where we stood.

Cross-examined by Mr. Sohier.—I don't recollect seeing Dr. Parkman any other day that week; don't recollect when I saw him before. He passed us on the same side of the street. I told Mother the next day, after inquiry was made about the Doctor's being missing, that I saw him the day before, when she called to me out of the window.

To the Chief Justice. I heard on Saturday, of Dr. Parkman's being missing.

DWIGHT PROUTY, JR., *sworn,—examined by Mr. Bemis.* I am thirteen years old; go to school, the Phillips school, with George Moore.

I knew Dr. Parkman by sight; last saw him, Friday, November 23d, at ten minutes of two in the afternoon. I recollect it, because our school begins at two. We live at No. 44 Bridge street. That day, I looked at the clock when I left to go to school, and it wanted fifteen minutes of two. I went along to the corner of Fruit street, and there was a truck stuck in the mud. The team was headed towards Grove street. I believe the boy with me, George Moore, said, "There goes Dr. Parkman," and I remember noticing him. I had often seen him before; am unable to say what dress he wore. The Doctor passed close to us, on the same side of the street. I recollect when we left, and were going away, George's mother spoke to him, out of the window, and told him that it wanted ten minutes of two. We went along to school together, without stopping, and got there just in season. It was just as we left, that the Doctor passed by.

Cross-examined by Mr. Sohier. — The truck was in Fruit street, and headed towards the iron-foundry.

ELIAS FULLER, *sworn,—examined by Mr. Bemis.* I am an iron-founder, and carry on the West Boston iron-foundry. Our counting-room is situated on the west side of North Grove street, looking down Fruit street. I should think it is about seventy-five feet from the front of the Medical College.

I knew Dr. George Parkman; saw him frequently, and had business transactions with him. I last saw him, Friday, the 23d of November, between one and a half, and two o'clock, P. M. I was standing, that afternoon, on the sidewalk in front of my counting-room, waiting to meet a Mr.

Joseph Annin, who had made an appointment to meet me at two o'clock. I think Mr. Annin actually called a little before two. While standing there, I recollect inquiring the time of day of my brother Albert, more than once; and I recollect his telling me, before I saw Dr. Parkman, that it wanted twenty minutes of two. Some few minutes after, Dr. Parkman passed, and Mr. Annin called directly after, and I went away with him. I recollect seeing the truck set in the street. It was Marsh and Banks's, loaded with pig-iron for us, and it had two horses attached to it. The Doctor came over to the west side of Grove street, and bowed to me as he passed. He went by in the direction towards the Medical College, while I was facing towards Cambridge street, looking for Mr. Annin. I did not look round to see if he went into the College.

Cross-examined by Mr. Sohier. — He was walking fast, even for him. He was dressed in a dark frock-coat, I should think, and dark clothes; though I did n't take particular notice of his dress.

Albert Fuller, *sworn, — examined by Mr. Bemis.* I am an iron-founder; brother of the last witness, and concerned with him in the West Boston iron-foundry.

I had known Dr. George Parkman some two years before his disappearance, and had had frequent occasions to meet him on business. I last saw him, November 23d, Friday. I saw him cross North Grove street towards our counting-room, and pass towards the Medical College. He passed within twelve feet of where I was weighing off castings, and bowed to my brother as he passed. After he had gone by, I stepped out into the street to see if he was going into the counting-room, as I thought he might have business with us, and saw that he did not go into it, but was going past towards the Medical College. Where I last saw him, he was from forty to fifty feet distant from the College. The time was between half-past one and two o'clock, and nearer two.

I remained at work, where I was, all the afternoon; did not see the Doctor go back again. My position was such, that I could have seen him if he had gone out either of the two entrances to the College, by Grove street, or Fruit-street place. [The plan exhibiting the location of the Messrs. Fullers' counting-room, with reference to Grove street and Fruit-street place, was here pointed out to the jury and the Court. The attention of the former had been called to the streets and the buildings adjacent to the College, when on

the view, in the morning.] I was at work at the open doorway of the foundry, and about seventy feet distant from where Fruit-street place enters Fruit street. As to the time, I remember my brother Elias's inquiry, but do not recollect how shortly after, the Doctor came by. My attention was called to the matter next day, by hearing that the Doctor was missing.

I knew the defendant slightly. He came into our counting-room, the Tuesday after the disappearance, and signed a check for a Mr. Cummings, a neighbor.

In reply to the Court. — I heard of Dr. Parkman's disappearance, Saturday, the next day after. It was the subject of general conversation in our vicinity.

Mr. Littlefield came to our shop, the Friday after the disappearance, a week after, and borrowed some tools of me, — a chisel, bar, and a hammer. I cannot positively state the time of day that he called. I think it was afternoon; and the remains were found the same evening. I lent him a chisel; and I think my brother Leonard had previously lent him something, and, at this time, went to get a bar and a hammer for him.

[An inquiry, "For what purpose, or what declared purpose, Mr. Littlefield borrowed the tools?" was here ruled inadmissible.]

When Mr. Littlefield received the chisel and hammer, he went to the Medical College, and I saw no more of him that night. Kingsley, I think, called on me, to know if Littlefield had borrowed any thing. I cannot say whether Mr. Trenholm was with him or not. I did not go to the College, myself, that afternoon, and do n't know what use Mr. Littlefield made of the tools.

Dr. Parkman was a very punctual man. We had always found him so, in all our dealings.

When Dr. Webster filled out the check, he said something to the effect, that "he saw by the papers, that nothing had been heard of Dr. Parkman."

Cross-examined by Mr. Sohier. — When I was attending the scales, the Friday afternoon in question, I had some six or eight men at work bringing up the iron to be weighed. I merely superintended taking off the weights. Where I stood, I could see both side-walks in Fruit street. I stood sideways to the street, but could see up and down, well. As to the time, I repeat, that it was nearer two, than half-past one.

In reply to the Foreman of the Jury. — I had to stoop some, while at work; but never so much as to prevent my seeing up and down the street.

LEONARD FULLER, *sworn, — examined by Mr. Bemis.* I am brother of Albert and Elias, the last witnesses, and work with them in the foundry.

I recollect the day of Dr. Parkman's disappearance. Mr. Littlefield came to me that day, after dinner, and wanted to borrow an iron bar. I took a churn-drill, about four feet long, and straightened it, and let him have it. In about an hour, or an hour and a half, he came back, and wanted a hammer and a chisel. He had his coat off, and was sweaty, and his clothes were covered with dirt. My brother Albert handed him a chisel, and I got him a hammer. He took them and went to the College, and I did not see him again.

I knew Dr. Parkman, and saw him that day; but can't tell, at what time. He had been in the habit of coming into our counting-room, almost every day; and I had known him for the last ten years. He was a very prompt man. I did not notice anything peculiar in his appearance that day, different from usual.

Cross-examined by Mr. Sohier. — I did not see Dr. Parkman at the time my brothers did; but in Court street, the middle, or earlier part, of the day. I don't recollect his dress, particularly.

PAUL HOLLAND, *sworn, — examined by Mr. Clifford.* I am a grocer. I used to keep at the corner of Vine and Blossom streets, but do not, at present.

I saw Dr. George Parkman last, Friday, the 23d day of November. He came into my store in Blossom street, and bought thirty-two pounds of crushed sugar and six pounds of butter, which I agreed to send home. He brought in a paper-bag. While in the store, he had some conversation with some one else, and, before going out, asked permission to leave the bag for a "few" minutes, or "five" minutes, I don't remember which. He gave no directions about the other things, but said he would call for the bag. I suggested that I would send the other things home that afternoon. That was just as he was going out of the store; and he bent over and said, that that would do, and spoke about calling for the bag. I sent the other things up to his house, in Walnut street, that afternoon, but the bag remained in the shop till evening, and I found, on opening it, that it contained green lettuce.

I heard of the Doctor's being missing, Saturday afternoon, from Mr. Kingsley and others. Mr. Calvin Moore was in the store at the same time that Dr. Parkman was. The bag of lettuce remained in the store till Saturday afternoon, when Mr.

Kingsley called to inquire about Dr. Parkman. I was not in, when Mr. Kingsley first called. My clerk was not in, when Dr. Parkman called, but had gone to dinner. He usually goes at one, and returns at two, or quarter past, and then I go. I cannot say how long it was after the Doctor went out on Friday, before the clerk returned.

Cross-examined by Mr. Sohier. — Dr. Parkman did not appear to be in a hurry. He had on a black frock-coat, but no overcoat. His pants were black, and I think he had on a black vest, a black cravat, — either silk or satin, — and a black hat.

JABEZ PRATT, *sworn*, — *examined by Mr Bemis.* I am one of the coroners of this county.

I was called upon, by officer Spurr, on the evening of the 30th of November, between nine and ten o'clock, to go to the Medical College and see certain remains which had been found. I went with him to the house of Samuel D. Parker, Esq., the County Attorney, and thence, in company with him, Dr. Martin Gay, and some others, to the jail in Leverett street. I saw Professor Webster in the lock-up under the jail-office. Previously to this time, I had had a warrant put into my hands for his arrest, issued by the justice before whom the complaint had been made.

When I went into the lock-up, Professor Webster was lying on his face in the berth, apparently in very great distress. Dr. Gay said something to him; desired him to be calm, and requested him to get up. He said that he was unable to get up. They helped him out of the berth. He was very much agitated, and trembled, and shook all over; more than any person whom I ever saw. He exclaimed, "What will become of my poor family!" Afterwards, two of the officers took hold of him, and had to pretty much carry him up stairs. He was nearly helpless, so far as the use of his limbs was concerned. He was taken up into the office, and seated in a chair. He called for water; but was so agitated that he could not drink. He seemed to thrust the tumbler away from him, when offered to him, and did not attempt to take it into his hands.

Mr. Parker, before going down to the jail, had recommended that none of us should hold conversation with Professor Webster, about his arrest. Mr. Parker had some conversation, himself, with the defendant, while in the office, about going down to the College. He said to Dr. Webster, "there have been some discoveries made at the Medical College,

and we have come here to see if you are willing to go down, and make any explanation of them which you please." I do n't recollect any answer on his part, further than that he consented to go.

Mr. Leighton, the clerk of the jail, and I, went down inside of the carriage with him to the College. Mr. Cummings, the turnkey of the jail, went on the outside. When he got into the coach, he was very much in the same helpless condition, as he had been. We had to help him in, and lift his feet in, after we had put his body in. I noticed his perspiration in the office, though not in the lock-up. He had some conversation with Mr. Leighton, on the way down, but I do n't recollect, what. I only remember his complaining of being taken away from his family, and the manner in which it had been done.

When we arrived at the College, he was taken out and led up the front steps, supported by Leighton and Cummings, I think. I did n't have hold of him, myself. We entered the College by the south main door; thence went into his lecture-room, and thence into the back upper laboratory. The door leading into this last room had to be broken open. We then tried to enter the back private room; found it locked. Inquiry was made for the key; and Professor Webster said, that that was his private room, where he made his chemical preparations, and kept his dangerous chemicals; he said that he had n't the key, because they had taken all his keys away, when they arrested him. The room was broken open with an axe. Some of the party went in, and I went in. There was a coat lying near the door. Dr. Webster stood where he could look in, and said "That that was the coat he wore to lecture in; that if they were not careful, while they were moving about, they would break some of the bottles and do great mischief." On the side opposite the entrance, there were some drawers, which either stuck, or were locked, so that they could n't be got open. They broke open one or two; and he objected, saying, "You will find nothing there but some demijohns and bottles; you will find nothing there of importance;" — and such was the fact. A new hatchet was found somewhere about, and some other articles, to which I did n't pay much attention.

We then went down stairs into the lower laboratory. I cannot give the conversation which occurred there; for there were a good many there; the room was full, and every one was acting in his own way; besides, I was a stranger to the building, and went there, supposing that I had another duty

to attend to, officially. I remember an inquiry for the privy-key, and a key being tried into the door, which did not fit. The door was then broken open, and the seat torn up; but I cannot say that this last was done at the same time with the other. Some person inquired, "Where is the chimney that was so heated?" and it was pointed out. Some one also said, "There is the furnace;" and one of the party took off the cover, and took up something, which was said to be bones. I directed him to put it back, and to let everything stay as it was; and, so far as I know, everything did so remain.

Some one was supporting Professor Webster, by the arms, all this time. I remember his calling for water in the laboratory, and being so agitated that he could not drink it. He appeared different from anything that I ever saw before. He seemed like a mad creature. When the water was put towards him, he would snap at it with his teeth, and push it away with great violence, without drinking, as if it were offensive to him. He was more excited in the lower laboratory, than up stairs. Up stairs, I think that he was the calmest of any time, while I saw him there. I should think that this scene, about drinking the water, occurred while the party were in the laboratory, and before they went out to the trap-door to see the remains. I remember Mr. Andrews, the jailer, coming into the laboratory while we were there.

The party passed out of the laboratory to the trap-door. Mr. Clapp, Mr. Littlefield, and one or two others, went down; and I followed. We crawled out to the back side of the building, on our hands and knees, and there I saw the parts passed out through the hole. They were brought out, and laid upon the floor. The Doctor was a good deal agitated, while looking at them. He was taken back to the jail. I stayed behind, at the College; and after the remains were put into a box, and put into the privy, I came away, leaving the College in charge of several officers.

The next day, Saturday, I issued a warrant for summoning a jury, for four o'clock in the afternoon, at the College. When I arrived there, at that hour, other parts of the body had also been found. I think I was there also in the morning of Saturday. — At any rate, I took out the contents of the furnace with my own hands; but I cannot say, whether before, or after, the meeting of the jury. The police-officers who were there in the building, aiding in picking them over; but I took out almost all, myself. I directed the officers to separate the portions of bone and of metal. Among the ashes were pieces of metal, and small particles that looked like gold. After taking

out more than half of the contents, I found pieces of cinder and bone fused together, of considerable size, sticking to the bricks on the side of the furnace, and with a crooked piece of iron I broke them off.

The Court, at this point, at ten minutes past two, P. M., adjourned to half-past three, P. M.

Wednesday, P. M., March 20th.

The Court came in at half-past three o'clock.

JABEZ PRATT, *resumes.*—Down towards the bottom of the furnace, I found something that looked like a piece of a jaw, with mineral teeth in it, and other single teeth near it. The piece was about an inch long. I cannot say, whether it was an entire block, originally, or not. It was all in one piece. I afterwards handed the same piece to Dr. Winslow Lewis, Jr. I should think it was found two-thirds of the depth of the furnace down from the top. Two or three separate mineral teeth were afterwards found. The bones were picked out from the ashes, and put into a paper by themselves. The ashes remained there at that time. I gave directions, that the contents of the furnace should be passed into the hands of the chemists and medical men, to make what examination of them they saw fit. A number of these gentlemen saw them; some, on Saturday, some, on Sunday.

On Sunday, I sent for Dr. Jeffries Wyman, of Cambridge, to aid in the examination. I do not know what portion, he, or the others, took; they settled that, among themselves. I did not take charge of anything, but the bones, and the remains. I think some of the bones were set into the privy, in a box, with the other parts of the body, Saturday night, and the door nailed up, as being the safest place to keep them.

The contents of the furnace, I now recollect, were taken out, about nine or ten o'clock in the morning, and the jury met in the afternoon. I cannot undertake to say, what, the portions of bone found, were. The doctors were there in the afternoon; think, Dr. Martin Gay was there in the morning. I do n't remember all of the officers who were left in charge of the College that night. The bunch of teeth fell through the grate when I was clearing out the furnace, and officer Trenholm picked them up on the hearth. I have in my custody a tin box, which I received from Mr. Waterman, by Mr. Parker's, (the county attorney's,) direction.

[Box produced, and exhibited to the jury. A more particular description of it, will be found under Mr. Waterman's, (the maker's,) testimony.]

Cross-examined by Mr. Sohier. — My impression is, that there were pieces of bone in the cinders, which stuck to the side of the furnace: — I am sure, that there were; and think that I saw them, before breaking the cinders off. I cannot be positive of the names of the officers who remained in charge of the College, Friday night; think they were, Fuller, Rice, Starkweather, and Trenholm. When I speak of the block of teeth, I mean the same that I handed to Dr. Lewis.

WINSLOW LEWIS, JR., *sworn, — examined by Mr. Bemis.* I am a practising physician in this city.

I was called, on the Saturday afternoon succeeding Dr. Webster's arrest, to the Medical College, to examine some portions of a human body which had been found there. I found Dr. Martin Gay and Dr. Charles T. Jackson there. I was sent for, by Coroner Pratt. I think that I got there at three o'clock. I called on Dr. George H. Gay, and Dr. James W. Stone, to aid me in the matter; and also advised the co-operation of Professor Jeffries Wyman. We met next day, Sunday, in the morning. It was arranged, that Doctors, Gay, and Jackson, should make the necessary chemical investigations; Professor Wyman, should take charge of the bones, and the articles supposed to have spots of blood on them; and Doctors Gay, Stone, and myself, should prepare a detailed report upon the fleshy portions of the body, which we particularly examined. We accordingly drew up such a report, and made it in writing, under oath, to the coroner's jury.

[The report was here produced, and read to the jury, by Mr. Bemis, and explained by Dr. Lewis, as he proceeded, by means of a diagram prepared by Professor Wyman. The same diagram was used in connexion with Professor Wyman's testimony. It was a drawing of the human skeleton, exhibiting, by means of various coloring, the parts of the body covered with flesh, the bones found in the furnace, and the absent parts not accounted for. Questions of explanation were also asked of Dr. Lewis, as he proceeded, by the counsel for the Government, in connection with different parts of the report.]

REPORT OF MEDICAL COMMITTEE.

"Winslow Lewis, Jr., George H. Gay, and James W. Stone, — Having been directed to make a post-mortem examination, at the Medical College, in North Grove street, attended to that duty, Dec. 2d, 1849, at ten o'clock, A. M., and examined five portions of a human subject, viz.: a thorax, a pelvis, two thighs, and a left leg.

The thorax and left thigh were discolored, apparently with tan and some caustic substance. The three remaining ones were white, fair, and appeared as if they had been soaked in water. The cartilage on the head of the left thigh-bone, was colored black.

The following is a description of the five portions separately:

1st. *Remains of thorax*, and parts attached to it; which consisted of all the bones, except the sternum, or breast-bone. Fracture of the fifth right rib, apparently recent, and about four inches from the junction of this rib with the sternum. Both clavicles and scapulæ, present; the clavicles large. Both lungs, present, but collapsed; left lung had plural adhesions; structure of both lungs apparently healthy. Anterior thoracic-muscles, cut up from the ribs, about six inches from the centre, on each side, and with the skin thrown back; posterior portion of integuments, from left scapula to right lumbar region, of a dark mahogany color, and hardened; remaining portion of integuments, generally of a natural appearance, except a little greenness under the right axilla, (probably from commencing decomposition,) and some blueness under the left axilla, — leaving the skin soft, and easily broken, through artificial action exerted upon the hair and skin, as far forward as the section in the median line. An opening, slightly ragged, about one and a half inches in length, under the left nipple, between the sixth and seventh ribs, extending into the cavity of the chest. Remains of the thoracic aorta and thoracic œsophagus, present. Heart and diaphragm, wanting. Trachea, divided through cricroid cartilage. Spleen, contracted, externally granulated, and internally red. Left kidney, in its natural position, and contracted. No liver, right kidney, pancreas, stomach, or intestines.

Nota bene. The right kidney, much contracted and discolored, was discovered on the next day, and given to us.

Sixteen vertebræ present, — consisting of three lumbar; twelve dorsal; and the greater portion of the seventh cervical, which appeared to have been sawed through the upper part.

2d. *Pelvic portion;* — consisting of the bones of the pelvis, two of the inferior lumbar vertebræ, all the integuments, muscles, organs of generation, and the pelvic viscera, generally. All the intestines remaining, were about six inches of the rectum, through the anterior and external portion of which, a section had been made, and the mucous coat separated from it, four or five inches, throughout the whole cir-

cumference, but not cut off at the lower end. Hair, upon this portion, of a sandy gray. Both thighs severed from it, in a very irregular manner. Integuments and muscles divided down to the pubis, in the median line. On placing the pelvic portion in apposition with the thoracic, the third and fourth lumbar vertebræ corresponded precisely.

The spinous process of the third lumbar vertebra, with a portion of the transverse processes of the same, was absent from the thoracic portion, but was found attached to the fourth lumbar vertebra, which was on the pelvic portion.

3d. *Right thigh;* — on being placed in apposition with the pelvic portion, the bones, muscles, and skin, corresponded perfectly. Good muscular development, with but little of fatty matter. Patella attached; some ossification of femoral artery.

4th. *Left thigh,* — had a string about two and a half feet long, tied just above the condyle, leaving loose ends. Patella attached. On being placed in apposition with the pelvis, the bones corresponded; but some portion of the skin and flesh appeared to have been removed or contracted from artificial means. On the anterior surface of the thigh, and somewhat on outer parts, there were appearances of the action of fire, or some caustic matter.

5th. *Left leg,* — of natural appearance, fair size; and on being placed in apposition with left thigh, the articulation corresponded.

MEASUREMENTS.

	Inches.	Inches.
Thoracic portion, (length,)		17½
do. circumference below axilla,	30	
Pelvic portion, (length,)		9¾
" circumference below crest of ilium,	30½	
Both thighs, (of the same length,)		18
" circumference of largest part of each,	18¾	
Left leg, (length to outer malleolus,)		16
" circumference of largest part,	12¾	
Total,		61
Deduct distance from bottom of pelvis to top of acetabulum,		3¾
		57¼
All the parts being placed in apposition, the distance from the top of seventh cervical vertebra to the outer malleolus,		57½
Difference,		¼
Total length of parts discovered,		57¼
Distance from sole of foot to the outer malleolus, on another subject,		3
Distance from top of head to seventh cervical vertebra,		10
Total height, — five feet, ten and a half inches, or,		70½

The foregoing described portions appeared to belong to a person between fifty and sixty years of age. The muscular system was well developed, and there was very little of adipose matter.

WINSLOW LEWIS, Jr.,
GEORGE H. GAY,
JAMES W. STONE.

Attest: J. L. ANDREWS, *Secretary.*"

Dr. Lewis, resumes. — The head had been separated from the trunk, just below what is called the Adam's-apple, by sawing through the upper vertebra. The external granulation, or roughness of the spleen, showed the application of some chemical agent; and the internal redness, that the application had penetrated to the interior. All the bowels and stomach were gone. I should not think, that the dissection of the thigh from the hip, necessarily evinced the possession of anatomical knowledge, on the part of the person dissecting this body; but think, that a certain degree of anatomical skill would have been requisite, to have separated the sternum, (or breast-bone,) from the collar-bone. The ossification of the artery, would serve, somewhat, to designate the age of the subject; but not within ten years, with precision.

I had known Dr. Parkman for many years. There was nothing in these remains, dissimilar from what I should have expected to find in his body. There was nothing in the mode of separation of the parts, which indicated that it had been done for anatomical purposes; nor was there anything in the condition of the blood-vessels, which showed that it had been a subject for dissection. If it had been such a subject, I should have expected to find some of the preserving fluid, which anatomists use to inject them with. These preparations affect the color of the vessels; and I saw, in these parts, no such alteration of color. There is not the least doubt, that the five parts belonged to one and the same human body.

Coroner Pratt handed me a block of mineral teeth; perhaps, two inches long. I kept them at my house, that night; and next day, when Dr. Keep, the dentist, my neighbor, returned to town, I handed them to him.

Cross-examined by Mr. Sohier. — I had known Dr. Parkman, thirty years, I should think, and quite intimately. If I had not been told that he was missing, I should not have spontaneously conceived the idea, that this was his body. There were no peculiar marks, that I discovered, about the remains. The original height of the body, in a case of this kind, can

be ascertained very nearly: — within half an inch. I could not say that the hole in the left side was a stab. It was in the region of the heart; but the muscles and flesh had been much affected by some chemical application. It was in a friable state, easy to be torn, and the opening might have been made by pushing a finger through. I could not say, whether it had been made before, or after, death. I discovered no signs of the use of a knife; and we looked pretty carefully at the hole.

A body, of the size of Dr. Parkman's, might contain two gallons of blood, when alive: after death, perhaps two quarts might be found in the cavities. I cannot say how long it would take to consume a human head by fire: in such a furnace as that in the laboratory, where the bones were found, — perhaps, two hours. But this would depend upon the kind, and quantity, of fuel used. As to the time requisite for consuming the remaining portions of the body, it would be impossible to tell, with any accuracy. There were no marks to fix the age of the subject any nearer than I have stated; within some ten years. There was more muscular development of the lower extremities of the body, than I should have expected to find, from the size of the other portions. While the upper part of the body was thin and narrow, the lower limbs were full, and round, and showed that they had been well developed by exercise.

To the Attorney General. — If the person had been stabbed through the hole in the side, he would have been more likely to bleed internally, than externally. I make the statement in regard to the time requisite for burning up the head, with very great hesitation, and as worthy of but little reliance. The flow of blood from the arteries ceases very shortly after death; from the veins, in perhaps twenty-four hours.

James W. Stone, *sworn, — examined by Mr. Bemis.* I was one of the examining physicians, associated with Dr. Winslow Lewis, Jr., and signed the report just read. I still concur in the report.

As to the peculiarities noticed by myself, in the remains shown to us. There was rather more than usual hair upon the back, and of a sandy-gray color. The muscles of the lower extremities were unusually developed; more than one would expect, from the general size of the body; and indicated, that the person had been accustomed to exercise them a great deal, as in walking. The hair upon the back was longer than usual. In front, on the left side, it was apparently

burnt, so that its original length could not be judged of. Upon the other side, the skin was not singed, but decomposition had commenced under the arm-pit. Judging from the skin, hair, and general appearance of the remains, the body was that of a person from fifty to sixty years of age. The amount of ossification of the arteries, would tend to show that the age was approximating to sixty.

I knew Dr. George Parkman; had known him five or six years, intimately. There were no indications, in the peculiarities which I have mentioned in the parts shown us, or in anything which I noticed about them, which would conflict with the idea of its being his body. Yet, if I had not known that Dr. Parkman was missing, I should not have suspected that the remains were parts of his body. The Doctor was a great walker, and a fast one.

The natural conclusion derived from examining the remains, was, that the person who separated them, must have had some anatomical skill. The sternum, or breast-bone, was removed, as is usual in dissections. It is quite difficult for one who has not had practice, to remove it without breaking. I have seen good physicians, who have not been accustomed to make post-mortem examinations, themselves, give up the attempt to separate it from the first rib and collar-bone, and break it off, leaving the upper part unremoved. In this case, the incision was made, as usual, in the median line, from the neck downwards; the sternum was then properly removed, by passing the knife between it and the clavicle, or collar-bone; and the cartilages then divided close to the ribs. The divisions at the joints were rightly made, though somewhat irregularly.

There was but little appearance of these remains having been parts of a subject for dissection. That which looked most like it, was mentioned in our report, in connection with the dissection of the rectum. As to the presence or absence of a preservative fluid, it is usual to inject all subjects with some antiseptic or preservative fluid, as a solution of arsenic; or chloride of zinc; and this becomes absorbed, so that its presence cannot easily be ascertained, except by chemical tests. Another injection is sometimes made of glue or wax, for the purpose of dissecting for the arteries; but this is solid, and easily distinguished. There was nothing of this latter kind; and, so far as I could discover, of the former, either.

Cross-examined by Mr. Sohier.—I made a particular examination of the aperture between the ribs, but discovered nothing from which to infer that it was made by a stab during life. The flesh was soft, from the action of the fire, and

the finger might easily have been pushed through the skin and muscles. The edges of the aperture were rough, as if the hole had been made by a stick. There was no mark of a cut on the ribs, when we examined the hole. A day or two after, I heard that there was such a mark, but did not examine again to see if I could detect it.

To the Attorney General.—I mean that there was no apparent mark or cut of a knife on the ribs, when we saw the hole. The membrane and muscles between the ribs were perforated, but nowhere with such regularity as to indicate that it had been done with a knife. I cannot say whether the feather-edge, or periosteum, remained on the edge of the ribs, in proximity to the opening.

GEORGE H. GAY, *sworn,* — *examined by Mr. Bemis.* I signed the report which has just been read, and concur in it, generally.

I think that the separation of parts of the body, particularly the sternum from the collar-bone and first rib, indicate anatomical knowledge, on the part of the person who did it. The separation of the head from the body, by dissection, is difficult; and the saw is often used to get it off, when the mere object is to get rid of it. There is also a difficulty in separating the thigh from the hip, without hacking, to one unacquainted with anatomy. The division of the sternum from the clavicle, is also an operation requiring some skill. I should not say, that the general indications of the remains, evidenced a great *want* of anatomical skill on the part of the operator.

When I arrived at the College, Saturday afternoon, November 24th, one of the police-officers was just scraping off the tan with his cane. I noticed the aperture about that time; but whether it was there before, or not, I cannot say. I noticed no irregularity in the periosteum. We looked at the aperture, when examining the remains, but discovered nothing more, in regard to its cause, than has been stated. I do n't remember the name of the officer who was using the cane.

Cross-examined by Mr. Sohier.—We did not examine the perforation, to see if it were made by a knife: merely to see its appearance, internally and externally. I had an impression that it was done with a stick, and did n't see anything to change that idea.

Direct.—It was between three and four, P. M., Saturday, that I saw the officer scraping with the cane.

WOODBRIDGE STRONG, *sworn, — examined by Mr. Clifford.* I am a practising physician in this city, and have been such, since 1820.

I have always given a special attention to the subject of anatomy. When I was a student, (with the late Dr. Nathan Smith,) I took every opportunity to practise dissection; and after commencing practice for myself, when not much engaged, devoted a good deal of time to the pursuit of that branch of the profession. One winter, in particular, I occupied most of my time in dissecting, sometimes continuing at it from eight o'clock in the morning, till twelve at night. I have had a subject, on my table, for three months together. For several years I attended the Hospital; also other medical institutions; have taken part in numerous post-mortem examinations; and, in general, I may say, have had a good deal of taste for the study of anatomy.

In the pursuit of my anatomical studies, I have had considerable experience in burning up, or getting rid of human remains by fire. Where I had my office, at an early day, in Cornhill, I had poor accommodations for dissecting, and it was frequently necessary to burn up the remains of a subject. Once, in particular, I had a pirate given me by the United States' Marshal, for dissection; and, it being warm weather, I wanted to get rid of the flesh, and only preserve the bones. He was a muscular, stout man, and I began upon it one night with a wood fire, in a large, old-fashioned fire-place. I built a rousing fire, and sat up all night, piling on the wood and the flesh, and had not got it consumed by morning. I was afraid of a visit from the police; and by eleven o'clock, they gave me a call, to know what made such a smell in the street. I finished it up, somehow, that forenoon: but I look upon it, as no small operation, to burn up a body. It needs the right sort of fuel, to begin with. Wood is better than coal; and the lighter the kind of wood, the better. Pine kindlings would be good for the purpose. You need frequently to stir the fire up; and you must have something that the flesh will not quench or put out. There is always a difficulty in getting rid of human remains by fire, on account of attracting suspicion by the smell. I have been called upon by my neighbors, or the police, several times, on this account.

I was well acquainted with Dr. George Parkman; have known him ever since I have been in the city; and for several years was a near neighbor, and used to see him almost daily. I last saw him, on Friday, November 23d, the day of his disappearance, at about half-past twelve o'clock, in Bea-

con street. I was looking for him, for a special purpose, and he turned out of the street into the Mall, just before I came near enough to him, to speak to him.

I was at the Medical College on Tuesday, after the finding of the remains; had been there the day before, but went again, Tuesday-noon. The medical gentlemen, who have been called, Dr. Lewis and others, had then nearly completed their examination. I went for my own gratification, and without being expected to be called to testify to my observations. I saw, on a board, the parts of a body, which have been spoken of, — a chest, pelvis, two thighs, and one of the legs. The dissection of the chest was made in the usual way of post-mortem examinations. It was done as well as it would usually be done by a physician; and no one, who had not been in the habit of seeing dissections, could have done it, as it was.

I made inquiry, whether the medical gentlemen had examined the ribs, and whether there was no mark upon the rib near which the hole was. I was told by some person, that there was not. I drew forward the skin, myself, and found, on the under side of the sixth rib, exactly under the hole, a clean cut on the ribs. The hole was through the flesh, and through the membrane or periosteum of the rib, and made, when the parts were tense. After death, the elasticity of a body is gone, and it would be very difficult to make a clean cut like this. I have tried it. There was a clean cut through the periosteum, almost into the rib, just such as could not be made upon a dead body without a very sharp knife, but which might easily be made upon the living body with a common knife. This struck me at the time, as it went very near the heart, as the cause of the death.

I should suppose that a stab in that region would cause internal effusion of blood. In the case of these remains, the parts were unusually bloodless. They seemed as much so, as meat that is sold in the shambles. My inference from this would be, that the person bled to death from violence.

The hair, which I noticed upon the remains, was sandy, intermingled with gray. The skin had lost the appearance of elasticity, as in a young subject, and had the thickness attendant upon age. I judged from the hair, skin, and cartilages, that the subject must have been between fifty and sixty years of age. There were ossifications in the cartilages, such as do not commence till after middle life. The body was of an unusual formation. It was narrow across the shoulders, and the difference between the width there, and across the

hips, was much less than is usual. The body was also very straight, and the trunk was disproportionately long for the legs. In these respects, and in the color of the hair, and the general appearance of the skin, it corresponded to Dr. Parkman's body, when alive. I had often noticed his peculiar formation, and it seemed to me that this was the same. There was nothing dissimilar from what I should have expected to find in his body; but, on the contrary, everything agreed with it.

Cross-examined by Mr. Sohier. — I resided in Cambridge street, No. 5, when I was a neighbor of Dr. Parkman's: this was in 1842. I have experienced acts of kindness from him, and had the pleasure of thinking that he was one of my friends. I have noticed the color of his hair, on the parts of the person which are exposed. I believe he did not wear whiskers. The color of the hair on the body is not always, though usually, the same as on the head. I don't think that I ever saw him naked. If the parts of the body were disproportionate, as if belonging to different subjects, I think I should have noticed it. I am in the habit of noticing the human figure particularly, and observing beauties and deformities of shape.

I did not make the examination of the remains, the first day that I called at the Medical College, but on the second day. I think, Dr. Charles T. Jackson was present then, but don't recollect any others of the medical men.

I never burned up a body in a furnace; but I think that the intensity of the heat would be as great in a stove, as in the furnace which I saw at Dr. Webster's laboratory. That appeared to me the most inconvenient place for such a purpose. The stove which I saw in the same room, would have answered better. I have used a common cylinder-stove, with an anthracite coal-fire, to consume human flesh, when dissecting; but do not think that coal is so good a fuel as wood, for that purpose. I have overloaded my fire at times, with pieces of flesh, so as to extinguish it, and have been obliged, on that account, to re-kindle it.

Death might ensue immediately, from such a wound as I suppose to have occasioned the hole, and the bleeding have been wholly internal. This might follow from the shape of the wound, which might collapse; and also by the sudden stopping of the circulation of the blood, such as would follow the cutting the aorta.

To a juror. — I noticed the body, more particularly, on account of its being supposed to be Dr. Parkman's.

To the Attorney General. — I looked at the chest, with a view to Dr. Parkman's peculiarity of shape; and it corresponded to his, both before and behind.

FREDERICK S. AINSWORTH, *sworn, — examined by Mr. Bemis.* I am Demonstrator of Anatomy at the Medical College.

All subjects for dissection pass through my hands before they are given out for the use of the students, or professors; and it is my habit to keep a record of all which are received, and which are given out. After Professor Webster's arrest, I found that I had on hand, all the materials and subjects for dissection, which I ought to have. I saw the remains, and examined them, and came to the conclusion that they had never been brought into my department, as a subject for dissection. All subjects brought in for dissection, are injected with fluid, to preserve them from decomposition. This is done at the outset. The fluid used, is arsenious acid, or chloride of zinc. The fluid penetrates all the blood-vessels at once. I examined the arteries in the remains, with reference to that point, and saw no appearance of the use of such a fluid. I made no chemical examination, however.

Dr. Webster had no necessary official connection with the anatomical department.

I saw no indication of the remains having been dissected, for anatomical purposes. My impression, also, was, that the person who cut them up, had no anatomical knowledge. He might have seen a human body cut up; but that he ever had a knife in his hand, for the purpose, I very much doubt. The way in which the sternum was cut, is the only way in which it can be removed by a knife. It would be as difficult to break the bones, as to cut it out.

Cross-examination waived.

The Court here adjourned at seven o'clock, P. M., to to-morrow (Thursday) morning, at nine, A. M.

THIRD DAY. — *Thursday, March 21st.*

The Court came in at nine o'clock, A. M. The jury were called, and the trial proceeded.

CHARLES T. JACKSON, *sworn, — examined by Mr. Bemis.* I am a chemist by profession; have given attention to the

science of chemistry, and its practical application, for many years.

I was called to the Medical College after the discovery of the remains. I went there, on Saturday afternoon, December 1st, with the late Dr. Martin Gay, and met Dr. Winslow Lewis, Jr., with whom we made an arrangement for conducting the examination. Dr. Gay and myself, undertook the chemical part. There were shown to us, parts of a human body, and the contents of a small assay-furnace, about ten inches square. The parts of the body, were turned over to the other gentlemen.

I am, myself, acquainted with anatomy, having had a medical education. I took some notice of the remains. I saw no indication of their having been used for anatomical purposes. I thought, also, that they indicated the possession of anatomical knowledge, on the part of the person who had dissected them. The manner of opening the body, and the separation of the sternum, showed some skill on the part of the operator. This latter had been done by a clean cut. There was no hacking, also, about the thighs; they had been disarticulated neatly. I have heard the report made upon the remains, by Drs. Lewis, and others, and coincide generally with their conclusions.

I knew the late Dr. George Parkman, very well. He was frequently at my office. He was a tall, slender man, of somewhat peculiar figure; rather flat in the chest, and broad across the pelvis. At side-view, he seemed thin; but not so much so, in front. I saw nothing in the remains dissimilar, from, what I should suppose, was Dr. Parkman's formation. I should call them parts of a dry, muscular subject.

[The written report of the witness's experimental examination, made to the coroner's jury, was here put into the case, by consent, and read by Mr. Bemis, as follows:—]

"I, Charles T. Jackson, being duly sworn, depose as follows: I am by profession, a physician and chemist. On the first day of December, 1849, I was requested by Mr. James H. Blake, to accompany Dr. Martin Gay, in making some chemical, and other examinations, at the Massachusetts Medical College, in the city of Boston; and, on four o'clock of the afternoon of that day, I went with Dr. Gay to the Medical College, and there met Dr. Winslow Lewis, Jr., and others, with the coroner of the County of Suffolk, and the jury of inquest. We made a general examination, that afternoon, and adjourned till Sunday morning, when we resumed our examination; Dr. Jeffries Wyman being associated with us, and

aiding in the examination of the bones found in the chemical laboratory, as also of certain chips of wood, on which we had been shown certain brown stains. Dr. F. S. Ainsworth, also assisted us in the selection of fragments of bone from the cinders of the furnace.

The bones found by us, were in a mass of cinders and ashes, which had been removed from the furnace by the police officers, and were placed in a box, and had the appearance of having been exposed to fire. They were much broken, and were, in some instances, partially fused into the cinders. We identified, at that time, the following bones: right *os-calcis*, right *astragalus*, *tibia*, and *fibula*, *phalanges*, (resembling those of the ring, or middle finger,) *coronoid process* of the lower jaw, and numerous fragments of a human skull; a human tooth, with a hole in it, appearing as if it had been filled by a dentist's operation, and three blocks of mineral-teeth, with platinum rivets, — one of them entire, but wanting the gold plate, on which mineral-teeth are usually set.

A pearl shirt-button was also found in the furnace, partially calcined.

Numerous little copper cups, were also found in the furnace, and exactly resemble the new copper cups found in one of the laboratory-drawers. Many pieces of glass, were found among the cinders of the furnace. Masses of metal, were also found, which proved by analysis, in 25 grains, to consist of; —

Tin,	12.19
Lead,	11.95
	24.14

Hence it is, evidently, tea-chest lead.

The cinders of the furnace, pounded and washed, yielded globules of gold, some silver, and a little copper. In the portion of ashes and cinders, worked by me, 30 grains of gold were found.

My attention having been called to the state of parts of the human body, which Dr. Lewis was examining, I took portions of the skin and muscles from the thorax, and tested them by reddened litmus-paper, and found those parts strongly charged with alkali. I found that the discolored thigh, also, had been imbued with alkali, and stained by the tan. I took portions of the skin from the thorax and thigh, and carried them to my laboratory, and ascertained by chemical analysis, that the alkali contained in them, was potash, mixed with a very little sea salt.

The skin, in several places, appeared to have been corroded

by the joint action of potash and heat. The thorax had singed hair on it, showing the action of fire, and probably of flame; since the burning was superficial. I found no alkali in the interior of the thighs, nor in the flesh beneath the skin of the thorax. The muscles on the cut surfaces, at both ends of the thorax, were strongly alkaline. I observed that the skin, near an opening, near the sixth and seventh ribs, was quite tender; and that the edges of the openings into the thorax, were corroded, as if by potash.

I dissected out the arteries, and some of the veins of both thighs, and of the leg, and gave them to Dr. Martin Gay. I subsequently saw Mr. Richard Crossley, in my laboratory, in the presence of Dr. Gay, examine a portion of one of these vessels with the adhering muscle, for arsenic and zinc; and saw, that no trace of these substances was to be found.

The spots on the walls, floor, and furniture, showed us, were committed to Dr. Jeffries Wyman, who cut out chips from them in my presence. A pair of pantaloons and slippers were submitted to us by the officers; and Dr. Jeffries Wyman cut pieces off from them, in my presence, and took them away with him. Dr. Martin Gay took portions of the cinders and metals, for examination, and his results should be compared with mine, in order to ascertain how much gold was found among the cinders. CHARLES T. JACKSON.

Attest: J. L. ANDREWS."

Dr. Jackson, resumes. — I was instructed by the Attorney General, on the occasion of the meeting of the grand jury, to take possession of those articles, found at the Medical College, which were left with Dr. Gay. I went to his house, and found them in the very papers in which I delivered them to him. — I refer to the blood-vessels, more particularly. I took these, and delivered them to Mr. Richard Crossley, my assistant, a skilful chemist, who has since completed his examination of them. I fully satisfied myself, that the alkali, used upon the body, was potash. The action of potash on human flesh, is, to soften it, and ultimately dissolve it; when applied, in connection with heat, as by boiling, it dissolves it very rapidly. It might be used, in this way, precisely as they make soap.

The time requisite for dissolving a human body, by means of potash, if a suitable apparatus could be had, would depend upon circumstances. The flesh, if cut up into small pieces, and the potash boiled, might be dissolved in two or three hours. For this, it would take, of potash, half of the weight of the body, I should think; and, if the whole were done at once, a very large kettle. I examined Dr. Webster's labora-

tory, when there, after his arrest, but with no special reference to seeing what vessels were there. The largest kettle which I saw, was a tin-boiler with a copper bottom, such as is used for washing clothes, — some twelve or fifteen inches square. I did not see this, at first, but have taken notice of it more recently. I have seen nothing larger than this, about the premises. That would not have been of sufficient size to hold a body, unless it were the mere flesh, all cut off from the bones, and would not admit a thorax, or even a thigh, in its original state.

Potash, would be the best substance to use in dissolving or disposing of a human body, because it could be used in common vessels. Next to this, I should think, would be nitric acid. This would require, however, a vessel of porcelain, or glass, or of some material, which would not be acted upon by it. To dissolve a body, bones and all, in this acid, I should think it would take about an equivalent weight of acid. The difficulty or danger attendant upon such an operation, so far as the evolution of noxious vapor is concerned, would depend upon the degree of heat applied. If a gentle heat were used, very little nitrous acid gas would be given off; but if the acid were boiled, there would be a great deal. The dissolution of the body, would be most rapid, at a boiling temperature. The odor of this gas is very disagreeable, and noxious to health, if inhaled in any quantity. I think an open vessel might be used, for the purpose in question, if connected with a proper draught of a chimney. I saw no apparatus about the laboratory, large enough to dissolve any considerable quantity of matter. I noticed some nitric acid, and also muriatic acid, in several bottles, by the window in the lower laboratory; but think, that altogether, there was not more than some ten pounds of nitric acid.

I noticed, when at the Doctor's apartments, on the sides of the walls, particularly on the stair-case leading to the lower laboratory, green drops of fluid, and spots. They were still liquid, and stood out from the wall. I sent and got some filtering-paper, and Dr. Gay absorbed into the paper, from the walls, a quantity of this green fluid, and carried it away. Since I have had the things in my possession, which Dr. Gay took from the Medical College, I have examined this paper, (which I recognize,) and find the green fluid to be the nitrate of copper. These spots were very abundant, and extended all down the stair-case, from top to bottom. They have since dried; but when I saw them, were fluid.

There were also dark spots, or stains, on the stairs; and these green spots seemed to correspond to the stains. That

is, wherever there was a spot, there would be a spattering of this green fluid; and this was more abundant at the bottom, or towards the lower landing, than at the top. It had the appearance of having been spilt on each stair, separately, and then of having spattered back upon the sides above; it did not seem to have been spilt at the top, and then to have run down. [The witness pointed out on the model, the locality of these spots, which had previously been called to the attention of the jury, on the view.]

The nitrate of copper is a deliquescent salt, contracting moisture from the air, and will remain moist, and fluid, a long time. The taste is astringent, like verdigris, and caustic. I have been requested, to make some observations on the effect of this salt upon human blood, but have referred the subject to Dr. Wyman.

I was at the College, on Sunday afternoon, I think, when a pair of pantaloons and a pair of slippers were discovered, with what seemed to be blood, on them. I told the officer who found them, to keep them, and hand them over to Dr. Wyman; as I considered the microscope the best means of discovering the actual presence of blood. I was there, afterwards, when Dr. Wyman cut pieces from the pantaloons and slippers, which had spots on them, resembling blood, for the purpose of making the examination. The punch-pieces, or pieces of copper found in the ash-hole, which appear to have been originally refuse pieces, punched in making holes at the copper-smith's, are the same article as those found, new, in the drawers of the back room, up stairs. Those taken from the ash-hole, have, undoubtedly, been used for the purpose of making nitrate of copper, as they show the action of the acid, by their thinness, and still bear marks of its presence.

[The witness here produced several of these pieces, of about the size of a quarter of a dollar, with the nitrate of copper still adhering to them.]

I cannot now find the pearl shirt-button, though I am positive of having once seen it, before it went into Dr. Gay's possession.

The quantity of gold which I found in the portion of the contents of the furnace, submitted to me, was

	45.6 grains.
Found by Dr Gay,	47. "
And in a piece brought to me by Mr. J. L. Andrews, secretary of the coroner's inquest,	81.05 "
Total,	173.65 gr's.

The market value of this gold, at four cents a grain, would be $6 94.

[The blocks of teeth, afterwards testified of, by Drs. Keep and Noble, were here exhibited to the witness.] The presence of fused gold, is also visible in the melted mass of mineral teeth and cinders, shown to me. There is a further quantity of gold, to be obtained from the ashes, by a more careful sifting than I adopted.

[The attention of the witness, was here called, again, to the blocks of teeth; and he was asked to point out any indications, which he could detect, of the proximity of gold to the teeth, when both were in a state of great heat.] There is a pink color about the teeth, resembling that noticeable in other parts of the slag and cinders, where the globules of gold were found; showing the effect, as I think, of the oxide of gold. When the gold and teeth were fused together, this oxidation took place. The bones and cinders, in the state in which they were found, showed, in other respects, the application of great heat. I should think, that a piece of the natural bone is now adhering to the block.

[The sheath-knife, with silver hilt, was here exhibited to the witness.] I recognize this knife, as one which I have often seen in Dr. Webster's possession, at his rooms, at the old Medical College, in Mason street. I have known the Doctor for twenty-five years; attended his lectures when a medical student; and have since been in the habit of frequently calling on him. When this knife was first shown to me, at the Medical College, immediately after his arrest, it bore the appearance of having been recently cleaned. I scraped off some of the substance, which had apparently been used for that purpose, and found it to be whiting, moistened with oil. The oil was still fresh, and the mixture as soft as putty.

Dr. Parkman was about my height; I should think, a little taller. I am five feet, eleven inches, in height.

The furnace in the laboratory would have carried off the odor of burning flesh, if any had been consumed there. The draught is a strong one, and the soap-stone cover, fits tightly over the top.

Cross-examined by Mr. Sohier. — It was the nitrate, and not any other salt of copper, upon the wall.

If I had not heard that Dr. Parkman was missing, I should not have been led to suppose, that the parts of the body were his. The thorax had not the appearance of having been boiled, but had been singed by fire. I am confident that it

showed the action of fire. It did not appear to have been decomposed, except where the potash had been applied; and this was on the top, the bottom, and the left side; also on the back. It is impossible to tell how long it had been subjected to the potash. The thigh, found inside of the thorax, had been exposed to the heat of fire, and also, to the potash, I think. The head of the bone was smoked, and the skin softened, as if by the joint action of the two.

The time, which it would take to dissolve a human body in nitric acid, would depend on the mode in which it was cut up. If the bones were taken out, and the flesh cut into fine pieces, I think, that, with the proper quantity of acid, it might be entirely dissolved, in half a day, so as to become a dense, yellow, liquid. The quantity of acid, I should fix at the weight of the body. We absorbed the green fluid from the walls, before spoken of, on Monday or Tuesday after the arrest. It was then liquid, but might have been there two weeks. The whiting, which I saw on the yataghan, or sheath-knife, was close to the handle. The slag in the furnace, was produced from anthracite coal. I saw a part of the ashes taken out. There were wood-ashes, and charcoal, among them.

Direct, resumed. — I omitted to mention, that I have tried the experiment of applying nitrate of copper to Norway pine, such as the stairs leading to the laboratory, are made of; and find, that it produces a stain similar to that noticed there. [Pieces of pine thus experimented on, were here submitted by the witness, to the inspection of the Court and jury.

Richard Crossley, *sworn*, — *examined by Mr. Bemis.* I am a practical chemist; an assistant of Dr. Charles T. Jackson's. I have given attention to the application of chemistry, for thirteen years.

I made an experiment on some blood-vessels, handed to me by Dr. Martin Gay, to ascertain if they had been injected with chloride of zinc, or arsenic-acid; and was unable to detect the presence of either substance. I made a further experiment, on some more of the same blood-vessels, handed me by Dr. Jackson, on Monday last, and with the same result.

I coincide with Dr. Jackson, in the opinion, that the substance absorbed by the filtering-paper kept by Dr. Gay, is the nitrate of copper.

Dr. Nathan C. Keep, *sworn*, — *examined by Mr. Clifford.* I am a surgeon-dentist; have been in the practice of my pro-

fession, thirty years, in this city; now live, adjoining the residence of Dr. Winslow Lewis, Jr. I have given attention, both to artificial and natural teeth.

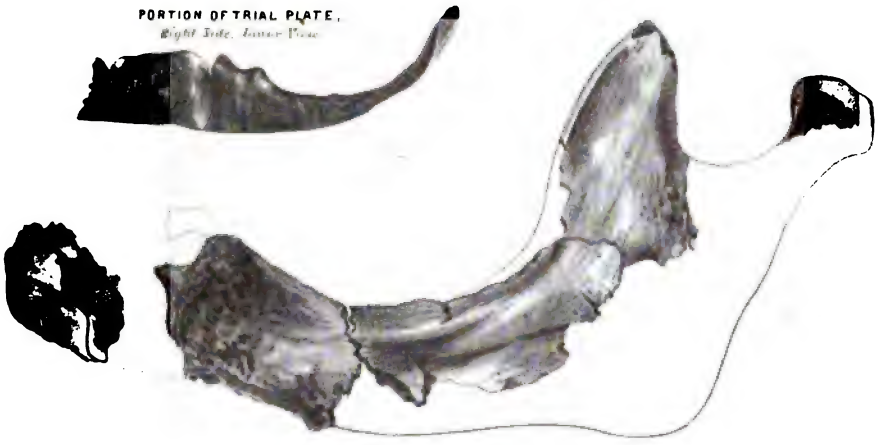
I knew the late Dr. George Parkman. I became acquainted with him, as early as 1825, when I was a student of medicine with Dr. John Randall. Dr. Parkman was sick at that time, and was attended by Dr. Randall, and I afterwards called at his house, myself. Our acquaintance began from that period; and since 1825, he had employed me as his family-dentist, and called on me, himself, whenever he needed any assistance or advice in the care of his teeth.

Some mineral teeth were shown to me, by Dr. Lewis, on Monday, December 3d, on my return to Boston from Springfield. I recognized them, as the teeth which I had made for Dr. Parkman, in 1846. [The blocks of teeth taken from the furnace, were here exhibited to the witness.] These blocks, now shown to me, are the same which I then recognized as having made for Dr. Parkman.

Dr. Parkman's mouth, was a very peculiar one: so marked, in respect to its shape, and the relation of the upper and lower jaws, that the impression of it on my mind was very distinct. I remember the peculiarities of the lower jaw, with great exactness. The circumstances connected with the ordering of these artificial teeth by Dr. Parkman, were somewhat peculiar.

[Mr. Sohier objected to the witness's detailing these circumstances. But the Court thought the statement of them admissible, so far as they went to explain the witness's means of identification.]

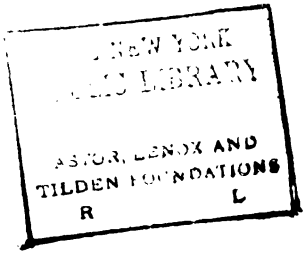
When Dr. Parkman ordered the teeth, he inquired how long it would take to prepare them; and, upon my asking his reason for the inquiry, he replied, that the Medical College, (which was then building,) was going to be opened with some inaugural ceremonies, on a given day; and as he was expected to be there, and should perhaps have to make a speech, he wished to have the set finished by that time, or he did not wish to have them at all. The interval named, was rather a short one; but I undertook to fulfil the order. The peculiarities of the mouth made it a very difficult case, requiring the exercise of as much skill and care as could be bestowed upon it. I began the undertaking as soon as possible; gave a large part of my time to it; saw the work frequently, while in progress, under the care of my assistant; and, from the circumstances attending the expedition necessarily used, I remember, very distinctly, the particulars of completing the set; more, than in ordinary cases.



PORTIONS OF NATURAL BONE OF RIGHT LOWER JAW.
As arranged and Drawn by Dr. Wyman, Inner View

See Pge. 54.

DR KEEPS PLASTER CAST OF LOWER JAW
Right side Outer View.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I began, in the usual way, with taking an impression of the Doctor's mouth; — an exact fac-simile of his two jaws. This was done by applying soft wax, (beeswax,) in a piece of metal, to the lower jaw, and then pressing it down, till the wax became cold. After the impression was thus taken, it was oiled, and liquid plaster poured in, which hardened in about ten minutes, and produced an exact copy of the jaw; — of the surface of the jaw, where the teeth were wanting, and of the teeth themselves, or any stump, where such teeth, or stump, still remained. A like process gave an exact fac-simile, or impression of the upper jaw. [The witness here produced plaster-casts of an upper and lower jaw.] *This*, is the plaster-cast, [exhibiting it to the Court and jury,] of Dr. Parkman's lower jaw, taken from life. It had in it, as the cast shows, four natural teeth, and three roots, or stumps.

The next step was, to obtain the metallic plate, fitting over the gum, and between the teeth, upon which to insert the artificial teeth. This was done, by first getting up a trial-plate. The trial-plate is usually made of copper, or some soft metal, and is procured by making, what is called, a male and female metallic punch and die, from castings taken from the plaster-cast. These castings are, one, of zinc or brass, and the other, of a softer metal, — tin, or, tin and lead. The copper, from which the trial-plate is to be made, is put between these castings, and, sufficient pressure being exerted upon them, an impression is produced, exactly corresponding to the shape of the punch, and that of the plaster-cast. This trial-plate is then put into the mouth; and if found to correspond exactly with the shape of the jaw, the interstices between the teeth, &c., it shows that the castings are proper to produce the gold plate, ultimately to be used as the basis of the set, or block.

Here, is the trial-plate, accompanying the plaster-cast, which was fitted into Dr. Parkman's mouth, and found to correspond exactly with the shape of his lower jaw, teeth, &c. [Here, the witness produced a thin, indented strip of copper, exactly fitting to the shape of the lower jaw, as represented in the plaster-cast, with interstices for the admission of the natural teeth.]

Dr. Parkman, had no natural teeth remaining in his upper jaw. *Here*, is the trial-plate, [producing it,] exhibiting the form of his upper jaw, and to which the gold plate, used for setting the teeth, exactly corresponded. Of course, it needed no perforations for the admission of the teeth, when applied to the natural jaw.

After the trial-plates were obtained, the gold plates were then made, and fitted into the Doctor's mouth.

The impressions, or fac-similes, of the two jaws, separately, being thus obtained, the next step, was to get their relative position, when in connection; or something, which should show, how they fitted together.

For this purpose, wax was again applied to both his upper and lower jaw, and he then closed his mouth, so as to leave an impression of his two jaws upon different sides of the same piece of wax. Plaster was then run into the two impressions, and pains taken, before the moulds separated, to mark their relative position, by means of an articulation, as shown in the moulds exhibited. [The witness here produced a second mould, or cast, of Dr. Parkman's mouth, showing a representation of his upper and under jaw, as when the two were shut together. It consisted, like the other, of two pieces, representing the upper and the lower jaw, but which fitted together by means of the articulation, or coupling, spoken of, in one absolute position.]

The relative connection of Dr. Parkman's jaws, (as shown in this model,) was a peculiar one. The receding of the upper jaw, and the projection of the lower one, were strongly marked; showing an unusual length of chin: differing, however, in conformation, from that of others, who have merely a prominent chin.

The next step, after obtaining a fac-simile of the jaws in the way spoken of, was to fit on the teeth to the plate, of the right length. The teeth, themselves, and what was to constitute an artificial gum, were made of the proper material, in a soft mass, like clay, and put into moulds, to bake or harden. Before baking, we have to make an enlargement, to allow for shrinking. The shape of Dr. Parkman's lower jaw, rendered this difficult. The teeth were then baked in a muffle, not exposed directly to the fire.

The teeth, in the case of the upper jaw, where there were no natural teeth remaining, were, at first, made all in one set; which, before baking, was cut into three blocks, by separations behind the eye-teeth. The lower teeth, also, consisted of three blocks, that were not made whole, at first, in consequence of the natural teeth. Of these lower blocks, the largest, or longest, was that, on the left side; the next largest, that, on the right side; and a smaller block, of two or three teeth, in front, completed the set.

All these three blocks fitted to one plate, and went into the mouth, together. The three upper blocks, were, also, all on

one plate. The two sets were connected together by spiral springs, which enabled the wearer to open and shut his mouth, with less danger of their being displaced. The teeth were fastened in, with platinum pins. I have another model, showing the length of the lower teeth. [Produces it, and exhibits it to the Court and jury.]

In baking the front block of the lower jaw, an accident happened to one of the teeth, which rendered it necessary to make a new block. This was so shortly before the time fixed for the completion of the set, that it was necessary to work all night, to repair the accident; and when we got them done, the next day, — I mean Dr. Noble, my assistant, and myself, — it only wanted thirty minutes, to the time fixed for the commencement of the ceremonies at the College.

[The Court here took a recess; in consequence of an alarm of fire at the lodgings of the Attorney General, who requested leave of absence, to preserve valuable papers. Mr. Clifford having returned in a few minutes, the trial proceeded.]

Dr. Keep, resumes. — I did not feel certain that all was completed, as I should finally desire it to be, and requested the Doctor to call again, and show me his teeth. When he next called, he remarked, that he did not feel as if he had room enough for his tongue. In order to obviate that difficulty, I ground the inside of the lower blocks, next to the tongue, so as to make more room. This grinding was somewhat difficult, in consequence of the teeth being in the plate, and because it had to be done with a very small wheel. The grinding removed the pink color from the gum, and also the enamel from the teeth on the inside, and somewhat defaced their beauty. The shape of the space ground out, was peculiar, from the size of the wheel, which was not larger than a cent.

I saw Dr. Parkman afterwards, occasionally, for the purpose of making such slight alterations, or repairs, upon his teeth, as were needed. The last time that I saw him, to do anything to his teeth, was about two weeks previous to his disappearance. Having broken a spring, he called upon me, late one evening, to repair it. It was as late as ten o'clock, or after; and being unwell, I had retired for the night. The person who went to the door, happening to know Dr. Parkman, asked him in, and came up and told me that it was him. Out of regard for him, I sent word that I would come down and attend to him, and dressed, as soon as possible. The Doctor told me his trouble; and I took out his teeth, both upper and lower set, examined them all over, to see that every

part was right, repaired the spring, and spent a half an hour in doing what was necessary. This was my last professional intercourse with him. He called on me, however, the day before his disappearance, and stayed some fifteen minutes, inquiring about a servant that had lived with me.

I left the city, the Wednesday following, (November 28th,) and went into the country, to Longmeadow, to spend Thanksgiving, and returned the Monday after. I had heard of the Doctor's disappearance before I left. On my return, Dr. Winslow Lewis, Jr., presented to me *these* three portions of mineral-teeth, [referring again to the blocks taken from the furnace,] saying, that he was requested to bring them to me for examination. On looking at them, I recognized them to be the same teeth that I had made for Dr. Parkman. The most perfect portion that remained, was *that* block, that belonged to the left lower jaw. [Holding it in his hand.] I recognized the shape and the outline, as being identical with the impression left on my mind, of those that I had labored on so long. [Here, the witness was strongly agitated.] Several of the other portions had been very much injured by fire. I proceeded to look for the models, by which these teeth were made. On comparing the most perfect block with the model, the resemblance was so striking, that I could no longer have any doubt that they were his. [Here, the witness was so overcome by his feelings, as to be unable, for a moment, to proceed. The prisoner exhibited no signs of emotion.]

There was sufficient left of these blocks, to show where they belonged. *This*, in my right hand, [holding it up,] belongs to the right upper jaw. *This*, to the left upper jaw; and *this*, to the front portion of the upper jaw. The three parts make up the whole of the upper set. The left lower block is nearly entire. The block attached to it, I take to be the right lower block, from exclusion. This last, certainly does not belong elsewhere; and, as we have found places for the others, I infer that this must belong in the place not supplied. There is a piece not identified, which may, or may not be, the small front block, (of two or three teeth,) of the lower jaw. I identify and assign places for five pieces, and there is one other piece not identified. These would, together, make the six pieces of the set. I find the platinum pins remain attached to the teeth.

[The witness here exhibited to the jury, and afterwards to the Court, the blocks of teeth in connection with the plaster-model or cast: calling attention, particularly, to the coincidence between the left lower block, and the model. He also pointed

out the place of grinding, showing a roughening of the inside, with a slight concave perpendicular indentation.]

I found, more or less imbedded with these teeth, portions of gold, and also minute portions of the natural bone of the jaw; — what is called cancellated bone, from its peculiar-shaped cells.

To a juror. — I saw the set of teeth in the Doctor's mouth, at the last interview.

Direct, again. — The presumption is very strong, that they went into the fire in the head, or with some portion of it, or in some way muffled. These mineral-teeth, when worn, imbibe moisture; and, if suddenly thrown into the fire, or heated with great rapidity, the outside becomes glazed, and the expansive power of the steam which is generated inside, explodes them. If put into the fire, surrounded by flesh, or other muffling substance, on the contrary, the temperature would be raised more gradually, and the moisture would evaporate from them, slowly. I have known such explosions to take place with new teeth, when heated suddenly. In fact, it is always necessary to take great care to heat them gradually; and, with a set which had been worn, I should expect nothing else, if heated suddenly, than that they would fly into innumerable pieces. Another circumstance seems to indicate that they went into the fire, in the head, or together; and that is, that the spiral springs would have thrown them apart, if not confined in some way, when thrown into the furnace. When the teeth were brought to me, the two blocks were in one mass, as now shown to me.

Dr. Lester Noble, now of Baltimore, was the assistant, whom I have mentioned.

Cross-examined by Mr. Sohier. — All these teeth came to me, at the same time, from Dr. Lewis, on the Monday after Dr. Webster's arrest. I have used no effort to bring to recollection, these facts, connected with the manufacture of this set of teeth for Dr. Parkman. In reply to your question, "When they first came to my mind after his disappearance?" I can hardly say, when they were ever out of my mind. They always occurred to me, whenever I met the Doctor. They were in my mind, when Dr. Lewis first showed the teeth to me; and I immediately said, "Dr. Parkman is gone: we shall see him no more." [The witness, and many of the audience, were here affected to tears.]

I recognized them at once, without the moulds, and then went to look for the moulds. This name [of Dr. Parkman, on the mould; shown to the jury,]was written

upon it, at the time it was made. They were kept in my cellar, where I had put them away. I keep my moulds, mainly, to provide against any accident which may happen to the set of teeth, made from them. I had before fitted parts of a set of teeth for Dr. Parkman; — a block for this left lower jaw, where the absorption is shown. This absorption occurred while he wore that block. This was before he went to Europe. I took a cast of his jaw, at that time.

I first heard of Dr. Parkman's disappearance, Saturday night, November 24th, before going into the country. I read the advertisement in the newspaper.

Direct, again. — Dr. Parkman wore no single mineral-teeth. The natural teeth, which he had remaining, were one tooth, and two roots, on the left side, and three teeth and one root upon the right side, in the following order: — beginning from behind, on the left side, two roots, then a tooth, (the eye-tooth,) then a vacancy; then, upon the other side, three teeth in succession, then a root, or stump. The teeth remaining, upon the right side, are one front tooth, the eye-tooth, the first bi-cuspid, and the root of the second bi-cuspid. Two roots of natural teeth were exhibited to me, said to have been found among the ashes. One of them, at the time of the examination before the grand jury, was still adhering to the largest block. [Witness identifies it, now separated from the block.] There was a third block, adhering to the two now connected together, united with them, by means of slag, or some other matter, when the teeth were first shown to me. It has since been broken apart. [It was stated by Mr. Clifford, and acceded to by Mr. Sohier, that this separation had taken place, when Mr. Sohier, in company with the counsel for the Government, was examining the teeth at the City Marshal's office, previous to the trial.]

Lester Noble, *sworn, — examined by Mr. Bemis.* I was an assistant of Dr. Keep's, in 1846. I entered his office the 11th or 12th of September, of that year, and remained with him till the middle of July, 1849. I am now a student of dentistry, in the Baltimore College of Dentists.

I recollect working upon a set of mineral teeth for Dr. Parkman, in the autumn of 1846. The superscription upon the plaster-mould, shown me, "Dr. Parkman, Oct., 1846," — (the mould No. 2, produced by Dr. Keep,) is in my hand-writing. I remember writing it.

The teeth shown to me, (the same blocks testified to, by Dr. Keep,) are the same which were shown to me, on Monday last, in presence of the counsel for the Government, and the City Marshal, when the latter delivered them to the former, under seal, and the seal was broken by the Attorney General. I have had them in my custody since. They struck me, at once, when I first looked at them, as the teeth made for Dr. Parkman. The general shape was the same. I find a hole through the block, at the same point as we were accustomed to make it. In looking it over carefully, on the inside, I noticed a surface, which appeared to have been ground. The moment that I saw it, I recollected that that block of Dr. Parkman's, had been ground in that way. I saw Dr. Keep grind it. The grinding did not reach quite down to the plate, as this does not. —(Showing the left lower block.) The grinding was done after the Doctor went to the Medical-college opening.

I have as good reason to believe that these are Dr. Parkman's teeth, as I have to believe any fact within my knowledge. I have not the slightest doubt, that these are the same blocks of teeth which I worked on for Dr. Parkman.

I remember the circumstances accompanying their being ordered, because we were obliged to be very prompt, in getting them ready, at the time set. The Doctor was sure to call, at the time he set, for any of his appointments. He had made appointments for trying them in, at several times, and always kept them, punctually. The opening of the Medical College, when President Everett delivered the address, was the time set, for the teeth to be done ; and I recollect, that, an accident occurring in baking them, we were compelled to sit up nearly all night to finish them. We got them finished, just in time to let the Doctor go over to the College. I went there, myself, and sat, where I could see the Doctor, and observe, if he had occasion to speak, how well he used them. I think the ceremony took place in the early part of November, 1846. I have the impression that Dr. Parkman did not speak ; but that, when complimented for his liberality by Governor Everett, he merely acknowledged it with a bow. He might have said a few words, but I rather think not. I understood the compliment to refer to the donation of the land for the College.

At this stage of the proceedings, it being two o'clock, P. M., the Court adjourned to three and a half, P. M.

Thursday afternoon, March 21st.

The Court resumed its session at three and a half o'clock.

LESTER NOBLE. — *Direct, resumed.* — It was in the early part of my studies, that I worked on Dr. Parkman's teeth. The first operation towards a set of teeth, is to take the impression in wax. I made the metallic moulds, myself. As there were quite a number of sets of teeth, in process of manufacture at the time, I cannot tell precisely how much time I spent upon this set, in particular; but it must have amounted to a number of days, altogether. I have made the experiment of putting mineral teeth into the fire without muffling, and then heating them suddenly, and never knew them fail to crack. I coincide with Dr. Keep, in his statement of the greater danger of those cracking, which have been in wear, and imbibed moisture.

This set of Dr. Parkman's had to be annealed again, after being once fitted to his mouth. Some accident happened to them, — I should think, about a year, after they were first fitted in. The lower set got bent together, and it became necessary to bind them down, and anneal them to the plate. The mark of the blow-pipe is still visible, on the blocks. [Shows it.]

Cross-examination waived.

JEFFRIES WYMAN, *sworn, — examined by Mr. Bemis.* I am a Professor of Anatomy in Harvard College; have been a teacher of anatomy for the last eight years.

I was called, in company with other medical or scientific gentlemen, to examine the remains found at the Medical College, in November last. I first went there, Sunday, December 2d. Some of the gentlemen had been there before, I believe. The duty of making the examination was divided. I had given into my charge, the fragments of bones found in the furnace, of which I have made a catalogue, and detailed description. The box before me, contains the fragments of bones found at the College, so far as I can judge from a general view of them. [The box produced by the City Marshal, and placed on a table before the witnesses' stand, was here referred to by the witness.]

My attention was not especially called to the fleshy portions; though I saw them, when I entered the room at the College, in the process of being examined by Dr. Lewis and his associates. I have drawn a diagram, exhibiting the position, in the skeleton, of the bones found, and showing, (in some degree,) what would be necessary to complete the body;

and here produce it. [Diagram here exhibited; the same, which had been used in connection with Dr. Lewis's testimony.]

I saw no marks of the body having been used, as a subject for common dissection. I was struck with the fact, that the sternum had been taken out, as it would have been, by a physician, at an ordinary post-mortem examination. I was also struck with the mode of the separation of the collar-bone from the sternum, and first rib. A person without a knowledge of anatomy, would not be likely to succeed in carrying the knife through so difficult a passage, as that between the clavicle, first rib, and the sternum. This is the only way of removal by a knife.' I should think, also, that the separation of the thighs showed some knowledge of anatomy. since the incisions were made directly towards the joint. My attention was not directed to the mode of separation of the neck from the trunk. I have known the saw to be used for that purpose, though it is not customary in common dissections.

I supposed the remains, to be those of a person who had passed the middle period of life. The skin was very light. On turning over the thorax, I was struck with the quantity of hair on the back. I had not before seen a person with so much. It extended from the shoulder-blades, half way down the back, on each side of the spine. I saw nothing inconsistent with the idea, that the remains all belonged to one and the same person.

If a person were killed by a blow, and immediately stabbed, there would be a flow of blood, according to the depth of the stab, and the size of the vessels wounded. If the blood were effused internally, it could be removed without difficulty, so as not to leave marks or stains. A post-mortem examination can be made, without necessarily spilling blood, if pains are taken to avoid it. They are not infrequently made upon beds, without taking pains to remove the linen sheets.

I examined spots on the staircase, near the lower landing, and which were supposed to be occasioned by blood; they proved, under the microscope, to be tobacco-stains. Higher up, on the stairs, were spots, which the chemists, present, Doctors Gay and Jackson, supposed to be those of nitrate of copper. On Sunday, they were still moist.

I have made experiments, in order to determine whether nitrate of copper will destroy blood-stains. Recent blood, under the microscope, always shows discs of a red color.

The action of the nitrate of copper on the blood-discs, was not immediate; they were, however, destroyed in a few hours. I should say, that the nitrate of copper will remove the evidence of blood-discs; and that these last, constitute the chief means by which *recent* blood can be detected by the microscope. I saw no spots of blood on other parts of the building.

A pair of slippers, and a pair of pantaloons, were shown to me for examination. [A pair of slippers, and of pantaloons, were here produced to the witness, on which were spots, resembling blood. These spots were of considerable size, and distinctly visible, upon the left leg of the pantaloons.] The slippers are the same, from which I cut portions having spots upon them, similar to those now remaining. I have satisfied myself that these spots, which I examined, were spots of blood. The right slipper had the blood on it; and, on the soles of both slippers, was a substance resembling Venetian-red.

The pantaloons are marked with the name, "Dr. Webster." I cut pieces from them, on which were spots; and these were shown, by the microscope, to be blood.* There were

* [By the kindness of Professor Wyman, we have been furnished with the following brief note on the microscopic test of the presence of blood, which we are glad to put in a permanent shape upon our pages.—Ed.]

Note.—When blood exists, in large quantities, upon furniture, clothing, &c., a general inspection, with the aid of chemistry, will determine its presence, with sufficient accuracy. It is, however, not unfrequently found in too small quantities, for chemical analysis; and it has happened, that the statement of a police-officer, or other non-professional spectator, has been admitted, as evidence, that the stains, in question, were those of blood, when the bare announcement, by a physician, even, should be taken with the greatest caution. There are abundant instances, in the treatises on Medical Jurisprudence, of unfounded charges, and unjustifiable arrests having been made, in consequence of an error at the outset, as to the true nature of stains, assumed to be blood. It is, therefore, in the highest degree important, that examinations should be conducted with the greatest care, and that another sign, than color, (which has been abundantly proved to be fallacious,) should be obtained.

Recently-drawn blood, when placed under the microscope, is at once recognized by the presence of vast numbers of *flattened discs*, (commonly, though inaccurately, designated as "blood-globules,") of a red color, with a single central spot; interspersed among which, may be seen, in far lesser numbers, compared with the discs themselves, *rounded colorless globules*, containing, each, three or four central granules. These last are known to physiologists as "lymph-corpuscles," or "lymph-globules," proper.

If a drop of blood be dried upon a piece of glass, painted wood, or other surface, and a small portion, (a thin scale, scraped off with a knife, is the most desirable form,) be placed under the microscope, and water added to it, it soon becomes softened, very slightly tinges the water around it with a pale reddish color, and becomes more or less transparent, according to its thickness. After a careful inspection, the observer will seldom be able to find any traces of blood-discs; but transparent, colorless, spots will be seen scattered through the mass, which, with a high power, (say 800 diameters,) may be seen to have a globular form, and to contain granules, — usually three or four. These are the lymph-corpuscles.

quite a number of these spots, now visible, on the outside of the bottom of the left leg. The drops of blood do not appear to have fallen from any great height; say, as much as three or four feet, or from the height of the hand, above the place where they were found. If they had fallen from that height, upon a vertical surface, they would have had an elongated form. My impression is, therefore, that they must have come upon the pantaloons, laterally, or spattered up, or have fallen from a very short distance above. The only other marks of blood, which I discovered, were a few spots, on a piece of white paper, said to have been picked up in the private room.

[Professor Wyman was now requested to produce his catalogue of the bones, and give such general explanation of its details, with the aid of his diagram, as would facilitate its being understood by the jury. The parts upon which he dwelt, as he proceeded, will be found noticed in the continuation of his testimony, at the conclusion of his report.]

"CATALOGUE OF THE FRAGMENTS OF BONES, TAKEN FROM THE ASHES OF THE FURNACE IN DR. JOHN W. WEBSTER'S LABORATORY, AT THE MEDICAL COLLEGE, IN GROVE STREET, AND FIRST SEEN BY ME, DECEMBER 2, 1849, (SUNDAY.)

(The list of fragments of bones given at the Coroner's Inquest, is prefixed. The present catalogue includes the parts there enumerated, as well as others, which were determined subsequently to the inquest.

The numbers, which follow the names, in the Coroner's

If a drop of blood be rubbed on a piece of glass, as by drawing a bloody finger across it, so that the discs are deposited in a *single layer*, and then allowed to dry, they are readily recognized, even in the dried state; but when allowed to dry in *masses*, I have failed to determine their presence. The lymph-globules, on the contrary, may be softened out, after they have been dried for months, and their characteristic marks readily obtained. I have examined blood, which has been dried for six months, and have found it easy to detect them. It is not improbable, that they may be detected, after the lapse of years, if the blood shall have been preserved dry, so as to prevent decomposition.

The evidence, that the stains on the pantaloons and slippers of Professor Webster, were of *blood*, was derived wholly from the microscope. And the presence of the lymph-corpuscles, combined with the color, and other, and less characteristic, microscopic appearances of the blood, was the basis of the opinion given at the trial.

While the presence of lymph-corpuscles, combined with the ordinary and more obvious appearances of blood, is regarded as the diagnostic sign of Blood, yet it should never be lost sight of, that it does not give an absolute sign, that the blood is that of the human body. The blood of some animals, so closely resembles that of man, in its microscopic characters, that, as yet, no positive means exist by which they may be distinguished. The opinion, that a stain of blood, in question, is human, or animal, must rest upon probabilities. J. W.

list, are those which designate the same parts, in the present catalogue: —)

No. on Coroner's List.		No on New List.
1.	Fragments of cranium,	7*a*
2.	Fragments of the orbit of the eye,	1
3.	Two fragments of the lower jaw,	11
4.	Fragment of a humerus, (?)	14
5.	Tip of the olecranon process of the ulna,	15
6.	Terminal phalanx of a finger,	19
7.	Fragments of a tibia,	21
8.	Right astragalus,	24
9.	Right os-calcis,	23
10.	Fragment of the atlas,	12
11.	Cervical vertebra, (its body united with the atlas (10), since detached,)	13
12.	Phalanx of a toe,	30
13.	Fragments undetermined,	35

Re-examination.

Names of the bones identified, and the characters by which they were determined. Those about which a question existed, are marked as doubtful. [Received the fragments, (the second time,) January 24th, 1850.]

No. 1. *Frontal Bone.* — Outer angle of the orbit, left side. — On this may be seen, — the outer portion of
Temporal ridge,
Part of the cavity of the orbit,
Supra-orbital notch,
Part of the frontal sinus.
(This is No. 2, of the Coroner's list.)

No. 2. *Temporal Bone.* — Petrous portion of the left side. — On this may be seen,
Internal auditory foramen,
Jugular fossa,
Carotid canal,
Fenestra ovalis.

No. 3. *Temporal Bone.* — Digastric fossa of the left side, with a portion of the "additamentum" of the squamous suture.

No. 4. *Sphenoidal Bone.* — Base of the great wing on the right side. —
Foramen rotundum,
Foramen ovale,
Sphenoidal sinus,
Vidian canal,
Suture.

No. 5. *Temporal Bone.* — (?)
Mastoid process,
Mastoid cells.

No. 6. *Parietal Bones.* — (Several fragments.)
Two tables,
Vascular canals. — Impressions of "Glands of Pacchioni."

No. 7. Two fragments of the *Occipital Bone.* —
a. Occipital protuberance,
b. Left lateral portion, with canal for lateral sinus.
(These fragments are continuous portions.)

No. 7*a*. Fragments of *cranium* not determined. — Some of them indicate fracture previous to burning.

N. B. — A few of these were found during the Second Search of the ashes, made at the Marshal's office.
(No. 1 of the Coroner's list.)

No. 8. *Left Malar Bone.* —
Edge of the Orbit,
Edge of temporal fossa,
Maxillary suture.

No. 9. *Left Upper Jaw.* —
Antrum,
Suture, fitting that of No. 8,
Ridge.

No. 10. One of the Condyles of the *Lower Jaw.*

No. 11. Four fragments of the *Lower Jaw.* —

No. 3, Coroner's list.
a. Coronoid process,
b. Alveolar portion which succeeds to (*a*), — with dental canal.
c. Portion succeeding to (*b*), with alveolus and dental canal,
d. Symphysis, (Chin.)

(The two latter pieces were found subsequent to inquest.)

No. 12. *Atlas* (No. 10, Coroner's list.) —
Upper and lower articulations, and
Arch of left side,
Tubercle for transverse ligament.
(A piece of tarsal bone, right cuboid, adheres. — See No. 25.)

No. 13. Body of a *Cervical Vertebra.*
(Under-surface projecting from the slag.)
(No. 11, Coroner's list.)

No. 14. Fragment of a *Humerus.* (?)
(Somewhat doubtful. — No. 4, Coroner's list.)

No. 15. Tip of *Olecranon* process of an *Ulna.*
(No. 5, Coroner's list.)

No. 16. Fragment of a *Radius*, or of an *Ulna.* (?)

No. 17. *Scaphoides* of the left side.

No. 17a. *Trapezoides.* (Side, right or left, doubtful.)
(This was found on the Second Search.)

No. 18. Second phalanx of a *finger.* (Side ?.)
(Found on Second Search.)

No. 19. Terminal phalanx of a *finger.* (Side ?.)
(No. 6, of Coroner's list.)

No. 20. Fragment of a *Radius.*
(Right, or left, doubtful.)

No. 21. Fragments of the *Right Tibia.* —
Tuberosity, with "spine" on its right,
Canal for the nutritious artery, and adjacent ridge,
Spine: — articulation with fibula,
Lower articulating surface.
(No. 7, Coroner's list.)

No. 22. *Fibula*, central portion.

No. 23. Right *Os-Calcis*, — nearly entire.
(No. 9, Coroner's list.)

No. 24. Right *Astragalus*, — nearly entire.
(No. 8, Coroner's list.)

No. 25. *Tarsal Bone*, — right *cuboid.*
(This adheres to No. 12.)

No 25a. *Tarsal Bones.* (?)

No. 26. Metatarsal bone of the *great toe.* — (Small fragments.)
(The ridge of the articulating surface indicates, — *the right.*)

No. 27. *Metatarsal Bones:* — distal portions.
(One of these was found on the Second Search.)

No. 28. *Sesamoid Bone.*

No. 29. Terminal phalanx of the *little toe.* — A part of middle phalanx adheres. (Second Search.)

No. 30. *Middle phalanx of a toe.*
(No. 12, Coroner's list.)

No. 31. *Phalanx of a toe.* (Second Search.) (?)
No. 32. *Fragments of fingers and toes.*
No. 33. *Fragments of Cylindrical bones.*
No. 34. *Fragments of bones of face.* (?)
No. 35. *Fragments not determined.*
(No. 13, Coroner's list.)
The following were found on the Second Search: —
Nos. 7a., (a few fragments,) 17a., 18, 27, 29, and 31.

The fragments of bones enumerated in the preceding catalogue, belong to the following regions of the body, viz.:

Cranium, (or Head,)
Face,
Neck,
Fore arms,
Hands,
Right leg, below the knee,
Feet.

There are some fragments, which were supposed to belong to the Humerus; they correspond with that bone, as to their angles and curves, but are not of sufficient size to render it *certain* that they are parts of a Humerus.

Besides the pieces of Cranium in the package marked, No. 8a., others are to be seen in the slag connected with the fragments, marked, Nos. 1, 3, and 21. Some of the pieces in No. 7a., do not present the appearance of having been fractured by the process of calcination, but by mechanical violence, previous to the calcination.

The fragments of the lower jaw, are those of the right side and chin; and belong to a person from whom the teeth had disappeared, between the coronoid process and the region of the first molar, or second bi-cuspid. The alveoli have been absorbed, and replaced by a flattened surface, with a ridge on one of its borders. This would indicate that many months had elapsed since the disappearance of the molar teeth.

The bone of the leg, (the *Tibia,*) is unequivocally that of the right side.

The additional fragments enumerated in this list, and not mentioned in the Coroner's list, were determined subsequently to the inquest, and the examination of the grand jury; and were, (with the exception of such as are recorded as having been found on the 'Second Search,') found in the package marked on the Coroner's list, 'No. 13, Fragments not determined.'"

I am satisfied, that the bones grouped together under the head of No. 11, in my catalogue, are those of the lower right

jaw. They belonged to a person of advanced age, who had lost his teeth, many months, at least, previous to his death. I made the drawing of the outline of the jaw, and of the parts actually found, as described in my report, before seeing Dr. Keep's model, or knowing anything about the condition of Dr. Parkman's teeth. The portions of the jaw indicated the absence of the teeth, from the coronoid process, to the first molar, or to the second bi-cuspid tooth, of which an alveolus, or socket, remained. Supposing it most probably to be that of the second bi-cuspid, I drew its outline, in pencil, as exhibited in the drawing. On comparing this drawing with Dr. Keep's model of Dr. Parkman's right lower jaw, I find that they correspond, in the absence of the three molar, or grinding teeth, (i. e., from the coronoid process, to the second bi-cuspid,) and that the model shows the existence of a root of the second bi-cuspid, in its alveolus, or socket. The model being taken from the mouth, when the flesh of the gums covered the bones, cannot be compared closely with the naked bones. I was struck with the fact, however, that the curve of these latter, if continued to the termination at the chin, would make the chin a very prominent one.

Dr. Keep's model, (supposing it to be accurate,) shows a remarkable depression, or absorption of the jaw, from which it was taken. I have never seen a similar one in any other jaw; have seen, perhaps, a hundred jaws of old people: and though absorption, or depression, is common, I have never seen the absorption take this peculiarity, or be so prominently marked. I should say, however, that, of those which I have seen, I have only examined fifteen or twenty with reference to this peculiarity.

There are unequivocal proofs, to my mind, that the bones grouped in No. 21, constituted a part of the *tibia*, or shin-bone, of the right leg. At first, I was doubtful; but I am now satisfied, from three particulars: — (1.) The size, and triangular form of the bone; (2.) The direction of the sharp portion, or "spine," with reference to the tuberosity; and, (3.) The position of the passage for the artery. The bones of the ankle, and heel, are also so perfect, that there can be no question about them. The remaining portions, are small fragments of the instep, and toes.

All the fragments, form parts of a *Head*, *Neck*, *Arms* and *Hands*, *Right Leg*, (below the knee,) and *Feet;* and belong to portions of a body, of which these parts were wanting, in the remains found in the privy and tea-chest. I found among them no duplicates of the jaw-bones. I saw nothing

inconsistent with the idea, that they all belonged to one and the same body.

[The witness was here asked to examine the mineral teeth, and see if he could detect, upon them, any indications of the presence, or adhesion, of natural bone.]

I do detect fragments of bone, which seem like bones from the interior of the nostril; but I cannot say, certainly, of what bone they form a part.

There are sixteen teeth in each jaw; eight on each side of the middle line of the face; consisting of three molar, or grinding teeth, two bi-cuspids, the canine, or eye-tooth, and two incisors, or cutting-teeth. The three molar teeth, occupy but little less than half the space of the whole eight.

Some of the fragments of the bones of the skull had the appearance of having been broken previous to calcination, or being burnt in the fire. Calcination removes the animal matter which gives to bone its tenacity; before this is removed, it breaks, with sharp angles, and is more likely to splinter. Common surgical experience shows this. After calcination, the bone is more likely to crumble. [A piece of bone, of the cranium, presenting sharp and well-defined angles, was here shown to the jury, by the Professor, as an exemplification of what he conceived to be a fracture before calcination.] I do not consider the sign as absolute, but only presumptive evidence. I take this to be a bone of the skull.

By the Chief Justice. — Does your distinction relate to fractures, as well before, as after death?

Professor Wyman. — Before, and after calcination only. A skull, from an anatomical museum, if fractured, would probably present a similar appearance.

Cross-examined by Mr. Sohier. — The bone, supposed to have been broken, before calcination, appears to be less calcined than the rest; violence in removing the bones from the furnace, may have been the cause of the appearance in question.

I consider the nitrate of copper as effectual, in removing the microscopic signs of blood, as water; perhaps not more so, unless the blood has soaked into wood. I should think muriatic acid a better means of destroying blood-stains; though I do not profess to be informed about it. I do not know how commonly nitrate of copper is used in laboratories.

The amount of blood, in the human body, is estimated at about one-fifth of the weight of the body; the amount would be twenty-eight pounds, in a person weighing one hundred and forty pounds; or, about as many pints. This estimate

is not much relied upon, by physiologists. No evidence of blood was found, except on the articles which I have mentioned. I caused the bricks to be removed from the floor of the upper laboratory, but discovered no blood between them. I saw a hole in the left side of the thorax, and inferred, that it was not made with a knife. My examination of this, however, was not so accurate, as it would have been, if I had expected to testify, in relation to it.

The separation of the parts of the body, was made in such a manner, as to indicate a knowledge of anatomy.

If the drops of blood had fallen, from the height of three feet, upon the pantaloons of a person standing upright, they would have assumed an elongated form. A few of the spots were slightly elongated.

I know of no means of determining the length of time that this blood had been on the articles. After blood has been dried, one or two days, it assumes a darkish brown color; after which, if kept dry, it changes but little, even after the lapse of years. All the spots, which I examined, had this color. With the microscope, I can distinguish human blood from that of the lower animals, but not from that of some of the higher, — of an ox, for instance.

Oliver W. Holmes, *sworn, — examined by Mr. Bemis.* I am Parkman Professor of Anatomy and Physiology, in Harvard University. The professorship was so named in honor of Dr. George Parkman..

The opening ceremony of the Medical College must have taken place on the first Wednesday of November, 1846, as that is the usual time for the commencement of the course of medical lectures. I recollect seeing Dr. Parkman, on that occasion, and of taking notice of his teeth. I thought that he had a set, which looked very new, very white, and the upper portion of which were very long.

I am the Dean of the Medical Faculty. Professor Webster's connexion with the other departments of the College was no more intimate, than this: he lectured four times a week, to the medical class, on the subject of chemistry; and his laboratory, lecture-room, and small back room, form an independent establishment, entirely separate from that of all the rest of the professors. I never knew him to have occasion for the use of subjects for dissection, in his department.

His lectures were delivered between the hours of twelve and one; mine, from one to two.

I saw the fleshy part of the remains, on Monday or Tuesday, following their discovery. I examined them a

short time, not as an expert, or with any view to testifying about them. They very evidently showed a knowledge of anatomy, on the part of the dissecter. Professor Wyman called my attention to the separation of the sternum, which is rather a nice matter. It showed that the person knew where to cut. I should say, generally, that there was no botching about the business. I noticed a discoloration, which I at first supposed to be the effect of heat; but was told, and readily believed, that it was owing to the application of some caustic substance. I saw a considerable development of hair; — upon the shoulder-blades, I should think. I am familiar with the appearance of Dr. Parkman's form; saw nothing about these remains, dissimilar from it.

A stab given in the region of the hole, between the sixth and seventh ribs, would not necessarily occasion a great effusion of blood, externally. It would depend upon the direction of the wound.

I remember the day of Dr. Parkman's disappearance. My lecture commenced that day, at one, punctually. My room is over his. The ceiling of his, is very high, and I am never disturbed by noises from it. His rooms, however, are generally vacant, when I am lecturing. I have often been in my room, when Dr. Webster was lecturing in his; have never overheard explosions from his experiments. I have occupied my present lecture-room, three years. The seats in it rise to some considerable height above the floor.

Cross-examined by Mr. Sohier. — If the stab between the sixth and seventh ribs, were in an upward direction, I think that there would be a great internal effusion of blood, and a considerable external.

I have overheard applause proceeding from Dr. Webster's room, when I have been in the demonstrator's room, but never in my own. The demonstrator's room is on the same floor, with mine, but more accessible to sounds from below.

I cannot say, positively, that I saw the hair singed, or other indications of fire, about the body.

Direct, resumed. — A mortal blow upon the head, would not necessarily be followed by any effusion of blood.

William D. Eaton, *sworn*, — *examined by Mr. Bemis.* I am a police-officer; was present when the remains were turned out of the tea-chest. Mr. Fuller took the thigh out from the thorax. I brushed off some of the tan from the chest, and saw the hole there, already cut. I saw it, at once; and remember saying to Mr. Fuller, that it was about the size of the jack-knife, which he had found.

Cross-examined by Mr. Sohier.—I do not mean the sheath-knife, or yataghan; but that which was found in the tea-chest. It was shut up, at the time; but I had opened it, and had it in my hand. I put my fingers into the hole; think, that it was upon the left side. I brushed or scraped off the tan with my hand. There were some six of us present at the time,—Fuller, Heath, Rice, &c. I took hold, and lifted up the thorax; but with no more force, than enough to take up a piece of paper. The tea-chest was filled up with minerals, in papers. I should think that there was more than one tier of them. I did not turn the body over, myself; only saw it turned over. I was at the College every day but Friday, (the 30th,) for many weeks.

It being now twenty minutes of seven, P. M., the Court adjourned to Friday morning, at nine o'clock.

FOURTH DAY.—*Friday, March 22d.*

The Court came in, at nine o'clock. The jury having been called, proceedings commenced.

EPHRAIM LITTLEFIELD, *sworn,—examined by Mr. Bemis.* I am janitor of the Medical College; superintend the building, make the fires, and do the sweeping and dusting. I have been employed in that capacity, seven years; four years, at the old, Mason-street College, and three years, at the new, in North Grove street.

I have known Dr. Webster, seven years, last October; since my first connection with the College. I had known Dr. Parkman, twenty years.

I was present at an interview between Dr. Parkman and Dr. Webster, on Monday of the week of his disappearance; the 19th of the month, I think. It was in Dr. Webster's back private room. It was somewhat dark in that room, though not dark, out of doors. I was helping Dr. Webster, who had three or four candles burning in the room. The Doctor stood at a table, looking at a chemical book, and appeared to be reading;—his back towards the door. I stood by the stove, stirring some water, in which a solution was to be made. I never heard a footstep; but the first I saw, Dr. Parkman came into the back room, from the door leading from the lecture-room into the back room. Dr. Webster looked

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round, and appeared surprised to see him enter so suddenly. The first words he said, were, "Dr. Webster, are you ready for me, to-night?" Dr. Parkman spoke quick and loud. Dr. Webster made answer, "No, I am not ready, to-night, Doctor." Dr. Parkman said something else; but what it was, I don't recollect. He either accused Dr. Webster of selling something that had been mortgaged before, or of mortgaging it a second time; or something like that. He took some papers out of his pocket. Dr. Webster said, "I was not aware of it." Dr. Parkman said, "It is so, and you know it." Dr. Webster told him, "I will see you, to-morrow, Doctor." Dr. Parkman stood then near the door; he put his hand up, and said, "Doctor, something must be accomplished to-morrow." He then went out, and it was the last time that I saw him in the building.

About half-past one, P. M., the next day, I was standing in front of the College, and Dr. Webster came up, and asked me, "If I was busy, or could carry a note to Dr. Parkman?" "If you are," said he, "you must get some one to carry it for me;" but he pressed me to carry it up, myself. I got a boy, named John Maxwell, to carry it up, "as quick as he could." I gave it to him, and in about twenty minutes he came back, and said, that he gave it into Dr. Parkman's hands, at his house.

I had an interview with Dr. Webster about noon, on Monday, the same day, before Dr. Parkman called in the evening. I am positive that it was that same day. Dr. Webster asked me, if the vault had ever been fixed, where we put the remains from the dissecting and demonstrator's rooms, up stairs. It is the vault, where the receptacle is, in the entry. He said, that something had been said before the Faculty, about a new one being built, or having that one repaired. He asked me, What the matter was, and how it was built? I told him, that it was built right under his coal-pen. The pen is large enough to hold eight tons. I told him, that the heft of his coal had sprung the walls of the vault, so that it leaked, and the smell came out all over the building. He asked me, If it had been fixed? I told him, that it had; and he asked me, How? I told him, that the vault had all been covered up with dirt. — I had had two men down there, two days; and they had covered it up with dirt, and there had been no smell since. He asked me, How I got down, to cover it up? — that is, not I, particularly, but how anybody got down? I told him, that we took up the brick floor in the dissecting-room entry, and then cut a hole through the board floor, to

get down. He asked me, If that was all the way to get down under the building? I told him that it was; — the only way to get under the laboratory, and his lecture-room: and I described to him, how the walls ran.

He asked me, If he could get a light into that vault? and I told him, no. He asked me, If I was sure? I told him, that I was; for I had tried it, a few days before, and the foul air put it right out. — I had tried it, at the request of Dr. Ainsworth, to find something which he had lost in the vault. I think it was an African skull, that he had placed there to macerate. When I went to look for it, I found that the rope had rotted off, and let the skull down into the vault. I attempted to put a light down, and the foul air put the light out.

The Doctor then said, that he wanted to get some gas, to try an experiment. I replied, "It is a good time now: the tide is in, and will press the gas up." It was high tide then, I believe. I asked him, How he could get the gas out of the vault into any kind of a vessel? He said, that he had apparatus, that he could do it with. He finally told me, that when he wanted the gas, he would let me know. This was the last that I ever heard of it.

On Thursday, the day before Dr. Parkman disappeared, Dr. Webster said, that he wanted me to get some blood for next day's lecture. He said — "I want as much as a pint." I took a glass jar down, off his shelf. I think that it held as much as a quart. I asked, If that would do, to get it in? He said, yes. He said, "Get it full, if you can, over at the Massachusetts General Hospital." Before two o'clock, I carried the glass jar out into the entry, and put it on the top of the case, where I put up notices. After Dr. Holmes's lecture was out, I went up to his room, and saw the student, who attends the apothecary shop at the Hospital. I do n't know what his name is; but I believe it is Hathaway: — he has been there a number of years. I told him of the glass jar on the case, and that Dr. Webster wanted to get a pint of blood. He said, "I think that we shall bleed some one to-morrow morning, and I will save the blood."

Friday morning, I went over to the Hospital after the blood, and saw the student of the apothecary shop. He said that he could not get any, as they had not bled anybody. I went to Dr. Webster's room about half-past eleven o'clock, that forenoon, and told him that I could not get any blood at the Hospital. He said, that he was sorry, as he wanted to use it at his lecture. That is all that I know about the blood. I have no recollection of speaking to Dr. Webster, again, that day.

In the morning of Friday, I made the fire in Dr. Webster's back room, and after it, I took the brush broom and swept up the brick floor, took the dust-pan, and threw the dirt into the fire. As I set the broom behind the door, I saw a sledge-hammer there. The door was the one leading from the back room, up stairs, to the laboratory below, and is at the head of the stairs.

[The locality was pointed out to the jury upon the model of the College, by the witness.]

I should think that the sledge, was one which had been left there by the masons, when they worked there, a year before. It was a mason's sledge, with a handle two feet long, and weighing some six or seven pounds. Both faces were rounded, like an orange cut in halves. Its usual place was the laboratory below; and I had never seen it anywhere else. It had always been kept there.

To a Juror. — The round face was manufactured so; not made round, by use.

Resumes. — I took and carried the sledge down stairs into the laboratory, and set it up against the box where Dr. Webster makes his gases. [Points out the place on the model.] I have never seen anything of the sledge since. I have hunted the building all over, but cannot find it.

I do not recollect anything else in particular, connected with Dr. Webster or Dr. Parkman, on that day, (Friday,) until about a quarter before two, P. M. After I had eaten my dinner, I was standing in the front entry, looking out of the front door. This was as near a quarter of two, as I can recollect. When I testified before the coroner's inquest, I thought it was half-past one; but I recollect that I examined the tickets for Dr. Holmes's lecture-room, which made it a little later.

I saw Dr. Parkman coming towards the College. He was then in North Grove street, about abreast of Fruit street. He was walking very fast. I then went into Dr. Ware's lecture-room, laid down on the settee nearest the front door, waiting for Dr. Holmes's lecture to close, to attend to clearing his table. During that time, I did not hear any one go in or out of Dr. Webster's room. The door of Dr. Ware's room always shuts itself; it has a spring on the top; so, has Dr. Webster's. I stayed on the settee, till it wanted a few minutes of two o'clock, when I went up to Dr. Holmes's room. I always go there before the lecture is out, to lock up the doors, and help the Doctor clear away his table. After I had put away the things in Dr. Holmes's room, I came down and locked the

outside front-door. I suppose that I may have stayed in Dr. Holmes's room, fifteen minutes. Dr. Holmes was the last out of the building, and I immediately locked the outside front-door. I then went down stairs to clean out the furnaces, for the fires next morning. I always prepare the furnaces in the afternoon, for the next morning. I went up stairs into the Professors', (Ware, Bigelow, and Channing's,) private back-room, and cleared out the stove there. This room is on the same floor as Dr. Webster's.

[The witness here explained the locality of the three lecture-rooms, and the back private room, by the model. The anatomical, (Professor Holmes's,) was shown to be in the story above the chemical, or that occupied by Professor Webster. The medical, or that used by Professors, Ware, Channing, and Bigelow, and in which the witness laid down, before going up to Professor Holmes's, was seen to be the one on the opposite side of the front entry, and on the same floor with the chemical.]

I then went down stairs, to Dr. Webster's laboratory-stairs door, that leads out into my cellar, to clean out his stoves. The door is the one that I had used all that season, and by which the Doctor, himself, used to go in and out. There are two doors there; one in the inner, and one in the outer, partition-wall. I tried the outer one, and found it bolted, on the inside. I then went round, to the other laboratory-door, on the same floor, (that which leads out of the store-room,) and found it, also, bolted. I put in my key, and lifted the latch, but found it fastened, on the inside. I thought that I heard him, in there, walking. I heard the Cochituate water, running.

I then went up stairs, through the front entry, and tried the door, that leads into the lecture-room. I put my key into the door, to unlock it. I found it unlocked, but bolted, on the inside. I went down stairs, again, went into my kitchen, stopped a spell, and then went, and laid down.

About four o'clock, P. M., Miss Sarah Buzzell, a young lady, staying at my house, from Medford, came to my bedroom, and told me, that there was a gentleman, at the door, that wanted to see me. I got up, and went out, to see the gentleman: it was Mr. Pettee, messenger of the New England Bank, the collector for the College. A student, by the name of Ridgeway, was going out of town, early, the next morning; and Mr. Pettee had come there to fill out the tickets, for him, for the course of lectures. He filled out all, except for Dr. Webster's course, and those I had, myself. I had half a dozen, which the Professor gave me, to sell, if

anybody wanted to buy them. Mr. Pettee gave me the tickets, and went away; — six tickets, being all that Mr. Ridgeway would need, except those for Professor Webster's course. I was to take the tickets, and get all the money from Mr. Ridgeway. After Mr. Pettee went away, (he might have been there fifteen minutes, or longer,) I went to the door under the laboratory stairs, and found that, and the other doors, all fast, the same as when I went to get in the first time.

I don't recollect that I tried his doors again, that afternoon, until late in the evening. My object, in trying his doors, was, to clear his furnace, to clear up his table, and to wash up his apparatus.

In the evening, about half-past five o'clock, — I cannot be precise as to the time, it was between half-past five, and six, — as I was coming out of my kitchen, I heard some one coming down the back stairs, that lead from the front entry, down into my cellar. It was Dr. Webster. He had a candlestick in his hand, and a candle, burning. He always used candles; I never knew him to use a lamp. He blew the candle out, placed the stick on the settee, and went out of the east passage-way, through, what I call, my door. I was so near him, that he could not help seeing me.

I did not see Dr. Webster, again, that night. I fixed myself, and went out to a party, to a Mr. Grant's, and got home about ten o'clock. When I came home, I went to my kitchen, took off my outside coat, and took a lamp, to go and fasten up the building. The first door, that I went to, was Dr. Webster's laboratory-stairs door. I found that fast. I then started to go into the dissecting-room, that extends on the southwest part of the building; and, by the way, tried the store-room door, leading into the laboratory, and found it fastened. I went to put out the lights in the dissecting-room, as the students dissected sometimes as late as ten o'clock. I saw no lights, and no one there. I shut the door to, came out, and bolted the outer door of the passage-way, which opens out-doors. It has a large bolt. I sat up a spell, and then went to bed. I never knew Dr. Webster's rooms locked in this way, at night, in lecture time, before, since I have been at the College.

Saturday morning, I had only one furnace-fire to make. There were only two lectures, that day, — from nine to eleven. I made the fire in the furnace that warms Dr. Ware's room. I then went to the dissecting-room, to make the fires there. I found the outer entry-door unbolted; it was a-jar, not shut to. This was about seven o'clock; it

might have been somewhat earlier, or later. No one had had access to the room, that morning. I supposed, when I found the door of the dissecting-room unfastened, that I had locked some student in, the night before, and thought no more of it, at the time.

No one had a key to the outside front-door, except Dr. Leigh, the librarian, that I know of; Dr. Leigh has been there, two years. No one, that I know of, except him, could gain access to the building after I had locked it up at night.

I tried to get into Dr. Webster's back-room, on Saturday morning. I unlocked his lecture-room door, by which he had come out the night before, and went down to the door leading to the back room, but found it locked. I never had a key to that door. In summer time, when the lectures are not held at the College, the Doctor had been accustomed to come out that door, and leave all fastened behind him; but this had not been his practice in lecture time. After finding this door locked, I went back to my rooms, and soon after, Dr. Webster came to the College.

He came into my entrance, at the east door. I think that he had a small bundle under his arm. He went up the same stairs, that he came down the night before. I followed him up into his room, he unlocking the door. He then took his keys, and unlocked the door leading from his lecture-room to his private room. After he had unlocked his door, the first thing that he said to me, was, "Mr. Littlefield, make me up a fire in the stove." I made the fire in the stove. I asked him if he wanted anything else done; he said, he did not. I then started to go down the stairs that lead into the laboratory. He stopped me, and told me to go out the other way. I turned round, and went out the same way that I went in. I do n't recollect of getting into his back room, or laboratory, again, that day.

I saw Dr. Webster again that forenoon, before eleven o'clock, I think. I met him in the lower entry, coming into the College, the same entry that he went out, the night before. He had a bundle under his arm, done up in a newspaper.

I gave him fifteen dollars, in gold half-eagles, for Mr. Ridgeway's ticket. The balance of the money which I received from Mr. Ridgeway, eighty-five dollars, I paid over to Mr. Pettee.

I could not get into Dr. Webster's rooms, any more the rest of that day, than I could, Friday afternoon. Saturday, was my sweeping-day. I tried the doors a number of times.

I heard some one in the lower laboratory, walking, and moving round, but could not get in, nor could I tell, what the person was doing. I heard the water running, every time that I passed through the store-room. It had not usually been allowed to run. I cannot say that I saw Dr. Webster, again that day, after I paid him the money.

I did not see Dr. Webster in the College, all day, Sunday, but his doors were fast all the time. About sunset, Sunday night, I was standing in North Grove street, abreast of Fruit street, and facing up the street, talking with Mr. Calhoun, one of the foundry-men. We were talking about Dr. Parkman; — how suddenly he had disappeared. (I heard of the disappearance, first, on Saturday afternoon; pretty late. — Mr. Kingsley told me of it.) While we were talking, I looked up Fruit street, and saw Dr. Webster coming. I said to Mr. Calhoun, "There comes one of our Professors, now." As soon as Dr. Webster saw me, he came right up to me.

The first words Dr. Webster said to me, were, "Mr. Littlefield, did you see Dr. Parkman, the latter part of last week?" I told him, that I had. He asked me, At what time I saw him? I said, "Last Friday, about half-past one." He asked, "Where, did you see him?" I replied, "About this spot."

He asked, which way he was going? I told him, "He was coming right towards the College." He asked, "Where were you, when you saw him?" I told him, that I was standing in the front entry, looking out of the front door. He had his cane in his hand, and he struck it down upon the ground, and said, "That is the very time that I paid him $483, and some odd cents." — He gave the exact cents, but I don't remember them. I told him that I did not see Dr. Parkman go into the lecture-room, or out of it, as I went and laid down on the settee, in Dr. Ware's room. [In reply to an incidental question, "Whether Dr. Parkman might not have entered the College through the lower front door?" — Mr. Littlefield interrupted himself, to say: —] The lower front door, underneath the steps, is never opened, except to throw out ashes or dirt.

Dr. Webster went on to say, that he counted the money down to Dr. Parkman, on his lecture-room table; that Dr. Parkman grabbed the money up, without counting it, and ran up, as fast as he could, two steps at a time, the steps upon which the seats are elevated in the lecture-room; and, that Dr. Parkman said, that he would go immediately to Cambridge, and discharge the mortgage. Dr. Webster continued: — "I suppose he did; but I have not been over to the Registry of Deeds, to see."

The Doctor said, further, that the first he knew of Dr. Parkman's being missing, he read it in the Transcript. He said, that he had come over to see about it; and, that he was the unknown man, that was to meet Dr. Parkman, alluded to, in the notice in the Transcript. I understood him to say, that he had been to see the Rev. Francis Parkman. He then went away, saying nothing more.

Usually, when Dr. Webster talks with me, he holds his head up, and looks me in the face. At this time, he held his head down, and appeared to be confused, and a good deal agitated. I never saw him so, before; that is, look as he did: my attention was attracted to it. I saw his face, and I thought that he looked pale.

[The counsel for the Government proposed to ask the witness, If, from the unusual manner of Dr. Webster, he did not take occasion to speak of it? To this, the counsel for the defence objected, and the question was passed over.]

I noticed agitation in his manner; he looked pale. I cannot say, which way he went; to the best of my recollection, he went towards Cambridge street. He did not go to the College.

On Monday, I could not get into Dr. Webster's room to make up his fires; I tried twice.

The first that I knew of his being in the College, that morning, my wife told me, that Dr. Samuel Parkman had been there, and had gone up to see Dr. Webster. I asked her, how he got in? since the doors were all kept locked. She said, that she tried the laboratory-stairs door, and found it unlocked. I went right up by this door, through the laboratory, into the back room, and saw Dr. Samuel Parkman and Dr. Webster talking together. I can't say, whether there was a fire in the stove. Dr. Webster was in the lecture-room; Dr. Samuel Parkman, near by, in the door-way. The parties were talking about Dr. George Parkman. I heard some conversation about some money; heard Dr. Webster say, that Dr. George Parkman was very angry. I did not stop more than half a minute. I went down stairs, and soon the front-door bell rang. I did not see Dr. Samuel Parkman go away.

I went to the front door, and it was a gentleman who had specs on; he asked for Dr. Webster. The gentleman, I did not know, though I have since ascertained that it was Mr. Parkman Blake. I told him that Dr. Webster was in. He said he wanted to see him. I asked him his name, so that I could carry it to Dr. Webster. I took the key to unlock Dr. Webster's lecture-room door. I found it unlocked,

but bolted on the inside. I told him that I could not get in that way, but that I would go round the other way, by the laboratory-stairs. I went up stairs, and told Dr. Webster that Mr. Blake wanted to see him. He was standing by the table, and did not answer, at first. He seemed to hesitate, but finally said, you may let him in. I unbolted the door, and let Mr. Blake in. It might have been about half-past ten o'clock. I cannot tell how long he stayed, nor what was their conversation.

About half-past eleven, I went again to the laboratory-stairs door, to go up and wait upon the Doctor, but found it fastened.

I think that it was about twelve o'clock, on that day, (Monday,) that I was upon the front steps, and saw Mr. Kingsley and Mr. Starkweather coming up the steps, to the front door. I can't tell whether they rang the bell or not. I went down to speak to them. Kingsley says, "Mr. Littlefield, we have come to look round the College. We cannot trace Dr. Parkman anywhere, but here." I offered to show him any part of the building, to which I had access, myself. While we were talking, I saw Dr. Holmes, and beckoned to him to come down the steps, and told him of Mr. Kingsley's request. The Doctor told Mr. Kingsley, that he did n't suppose that he wished to overhaul the anatomical subjects. Mr. Kingsley replied, that he did not; that they only wished to look round in the attics, to see if Dr. Parkman had not stowed himself away somewhere there. Dr. Holmes then told me to show them all round.

Mr. Kingsley spoke of going to Dr. Webster's apartments, first I went and found his door bolted, (the lecture-room door leading from the front entry,) and gave three or four raps. In a few minutes, Dr. Webster came and opened the door; just putting his head out. I told him that the officers had come to look for Dr. Parkman: and I do n't know that he made any answer at all. We passed into his lecture-room, and down through the back room, into his lower laboratory. Messrs. Kingsley and Starkweather looked round a little, and then went out, by the door leading into my cellar. I went out with them, and did not hear the Doctor say anything; do not know that he followed us down stairs, that day. I showed the parties all over the building; went up with them into the attics, and then they left the College.

I do not recollect, whether the officers went into my apartments, that day or not, nor whether I got into his rooms, again, that day. Dr. Webster was there, however; and I think

that I heard him in the afternoon. I tried the doors, again that afternoon. I had n't done any work for him, since Friday.

Tuesday morning, I tried all Dr. Webster's doors, in order to make his fires, it being lecture-day; but could not get in, further than the lecture-room. About as late as half-past nine or ten, I should think, I unlocked his lecture-room door again, and found that he was in. I found him with a cap, (a kind of smoking cap,) upon his head, and with a pair of overalls on. He appeared to be busy, in preparing for his lecture at twelve o'clock. I passed round his table, to go into the back room, and saw that he had a fire in the stove there. As I walked round the table, he walked towards the back room. I asked him if he wanted a fire in his furnace below; — the furnace, by the passage-way from the laboratory into the dissecting-room entry. He replied, No; that the things which he was going to lecture upon, would not stand much heat. I then left his room, and went out the same way that I went in; by the front entry.

A short time after, I was standing in the east shed, and saw Mr. Clapp, Mr. Fuller, Mr. Kingsley, and Mr. Rice, coming towards the College. Mr. Clapp said, that they wanted to search the College; that they were going to search over every foot of land in the neighborhood. He said, "If we search the College first, people round here, will not object to our searching *their* houses." I told him, that I would show him any place in the College, where I had access. As we went to the shed-door, we met Dr. Jacob Bigelow, and I told him what the officers had come for. They all went into my parlor, and talked. Dr. Bigelow told me to show them all over the building. One of the officers said, "Let us go into Dr. Webster's apartments."

I led them to the laboratory-stairs door, and found it fastened, — bolted upon the inside. I told them that that door was fast, and that we should have to try another way. I went up stairs, through the front entry, to Dr. Webster's lecture-room door. I found it unlocked, but bolted on the inside. I rapped as loud as I could with my knuckles: not hearing an answer, I rapped again; and then pounded with my hand, as hard as I could. In a minute or two, Dr. Webster unbolted the door, and I told him what the officers were there for. I don't recollect hearing him say anything, as we passed in; all of us went down into his back room.

I think it was Mr. Clapp, that went to the door of his little room, to which I have had no access. Dr. Webster said, "There, is where I keep my valuable and dangerous articles."

Mr. Clapp did not go in, but acted as if he were afraid to. He barely looked in, and then we all passed down the laboratory-stairs. I went forward, and they all followed. Dr. Webster came down with us. Some one, — I think it was Mr. Clapp, — went to the privy door. The door has a large square of glass over it. The glass is painted, or white-washed, about two thirds over. In looking over the top of the square, Mr. Clapp asked, "What place is this?" — Dr. Webster being within three feet. I told them, "That is Dr. Webster's private privy: no one has access there, but himself." I thought that Dr. Webster withdrew the attention of the officers from that place. He went and unbolted the door leading from the laboratory to the front store-room, and said, "Gentlemen, here is another room;" and we all passed out. I saw Mr. Kingsley, while we were there, in the recess of the laboratory, where the thorax was found in the tea-chest.

One of the officers said, that they wished to search the vault, or dissecting-room receptacle. I told them, that there was nothing there, but what I had thrown in myself; that I had the sole charge of it, and always kept the key. It has a lid, with a stout double chest-lock upon it. The aperture, or register of the vault, is about two feet square; and about two and a half feet in height, above the floor of the dissecting-room entry. The vault below the floor, I should think, is about twelve feet square. I unlocked the lid, and they lowered a glass lantern into the vault, and appeared to be satisfied that there was nothing there, but what belonged there. The officers went all over the building, and into my cellar: — I mean, the apartments on the same floor with the laboratory.

Some one asked me, if there was any way to get under the building. I told them that there was, and led them to the trap-door, leading under the building. We got some lights; one from my kitchen; and, I believe, the officers had their lanterns. Mr. Rice, Mr. Clapp, Mr. Fuller, and myself, went down under the building. The rest, except Mr. Fuller and myself, did not go very far. We two crawled across, from the front to the back-side of the building. Nothing was found or seen, but the dirt placed there when the building was made. I pointed to the wall under Professor Webster's laboratory, and told Mr. Fuller, that, that was the only place that had not been searched; that, the only way to get to it, was, to take up the floor, or dig through the wall. We came out, and made no further search under there. They then searched my rooms, and left.

I did not get into the Doctor's rooms, again, that forenoon. About four o'clock in the afternoon, I was in the front cellar, and Dr. Webster came to the College. — I mean, that I was in that part of the cellar, which is underneath the front entry. Dr. Webster came up the front steps into the front entry, and I heard him unlock his lecture-room door, and go in. I came out into the lower entry, between the front and back cellar, and next heard him go down and unbolt the door, leading under the laboratory-stairs, into my cellar. As soon as he unbolted that door, I went into the kitchen; and had not been there but a minute, when his bell rang. I said to my wife, "I guess Dr. Webster has got his door open, now, and I can get in."

I went up into his back room. He stood at the side of a table, and appeared to be reading a paper, which he held in his hands; — a newspaper, I mean. He asked me, If I knew where Mr. Foster kept; near the Howard Athenæum? I asked him, If it was the provision-dealer? He said that it was; and I replied, that I knew him. He then asked me, If I had bought my Thanksgiving-turkey? I told him, that I had not; that I had thought some, about *going out* to spend Thanksgiving, and did not know as I should buy one. He then handed me an order, saying, "Take that, and get a nice turkey, as I am in the habit of giving away two or three; and, perhaps, I shall want you to do some odd jobs for me." I thanked him, and told him that if I could do anything for him, I should be glad to do it. He also gave me another order to Mr. Foster, to send him out some sweet potatoes. I carried both orders down to Mr. Foster, and picked out the turkey, such an one as I wanted, weighing eight or nine pounds. It was the first time that Dr. Webster ever gave me anything.

I came home, and stayed round, till about six, and then fixed myself, to go to the Suffolk Lodge of Odd Fellows. As I was coming out of the entry, to go there, I heard some one coming down the back stairs. I do n't think that it was so late as half-past six. It was Dr. Webster, with a candle, burning, as before. He blew it out, and laid the stick upon the settee. He went out with me, and walked along with me, through Bridge street. I asked him, If he wanted any more fires, that week? as the lectures closed, that day, for the week. He said, "No, I shall not want any more fires, this week." Just before we got to Cambridge street, says he, "Mr. Littlefield, are you going down town?" I replied, "Yes, sir, I am going down to the Lodge." Says he, "You

are a Freemason, ar n't you?" I told him, "Yes; they call me a part of one." We then parted; he went towards the bridge, and I, up Cambridge street.

There was nothing more, that night. I found that the door of the laboratory was bolted, after I came back from Mr. Foster's.

Wednesday morning, Dr. Webster came to the College pretty early. I saw him when he came in. He went up the back stairs, into the front entry. Pretty soon I heard him move things round, in his laboratory. I went to his laboratory-door, leading from the store-room, and tried to hear what was going on, and to look through the key-hole; but the ketch was over it, on the inside, and I could not. While I was there, near the door, listening, I saw my wife, looking at me. I took my knife, and undertook to cut a hole in the door. I took out a little chip, but it made a cracking, and I thought Dr. Webster heard me, and stopped. It was at this time, that I saw my wife, and I went into the kitchen.

I then returned to the store-room, and laid down on the floor, with the left side of my face to the floor, so that I could look under the door. I heard a coal-hod move on the bricks, in the direction of the privy. I saw him come along with a coal-hod. I could see him as high up as his knees; he went along towards the furnace, where the bones were found. There were kept bark, charcoal, Cannel and Sydney coal, in the closet, near the privy; and anthracite coal in the bin, near the furnace. When he went near the furnace, he was out of my sight; but I could hear him move things, though I could not tell what he was doing. I laid about five minutes, then got up, and went down town, with my wife, about nine o'clock, and did not return until one o'clock in the afternoon.

About three o'clock in the afternoon, I was passing through the dissecting-room entry. When I came by the stair-case, leading to the demonstrator's room, I found the walls hot near where Dr. Webster's laboratory is. I was in close contact with the wall, on account of the projection of the stairs into the entry-way. I put my hand on the wall, and found it so hot, that I could hardly bear it there. I knew that it must proceed from the assay-furnace, where I never made a fire, and never knew a fire to be. I was afraid that the building would take fire. I went back to the front store-room, unlocked the door, and went in out of the dissecting-room entry. I found that the door leading into Dr. Webster's

laboratory, was bolted on the inside, but unlocked. I next went to the laboratory-stairs door, leading from my cellar, and found that fast. I then went up stairs, unlocked his lecture-room, and went in, for the purpose of going down that way. I found the door to the back room locked. I finally went down stairs, to look out of my cellar-window, to see if I could discover fire proceeding from the rear of the building.

Not being able to see anything, and to satisfy myself, I got out of my back door, and climbed on the wall to the double window of the laboratory, where the lights are on each side. I found the window unfastened, raised it, and went in.

The first place which I went to, was the small furnace, in which the bones were found. There did not appear to be much fire there. The furnace was covered up with a soap-stone cover, and the cover and range, all covered with minerals. There was a large iron cylinder lying on the top of the range. I then went to the door, leading to the place where the large furnace, (in the passage to the dissecting-room entry,) is, and took up a broom, to try the water in the hogsheads. There were two hogsheads of water, in one of which was a copper gasometer. I measured one with the broom-handle, and found that two thirds of the water was out. I did not measure the other, which had the gasometer in it, but the gasometer showed that the water was out. They were both full on Friday. A spout, about twelve feet long, laid on the floor, leading from one of the hogsheads to the sink in the middle of the floor.

I then discovered, that about two thirds of two barrels of pitch-pine kindlings were gone. On Friday, one of these was full, and the other about three-quarters full. As I went up stairs, I observed spots which I had never seen before. They did not look like water. I put my finger down to them, and tasted them, and they tasted like acid. When I got into his back private room, I found the same kind of spots there. They were still wet. I then went down, and got out, as I went in, by the window. I told my wife about these things.

I noticed that the Cochituate water was running all the week. I noticed this, as Dr. Webster had previously said, that he did not wish the water to run, as it spattered his floor; besides, the noise annoyed him. I never knew the water to be kept running before this time, except in order to draw it off.

I did not see Dr. Webster again, that day, nor on Thursday, the next, which was Thanksgiving-day.

Thursday, I tried to get some grape-vines, and a box which had stood outside of the laboratory-door, into the laboratory. There was a bunch of grape-vines, an empty box, and a bag of tan, which had lain there, outside of the Doctor's door, since Monday. I cannot say, however, how long the tan had been there. I am pretty sure that I saw it, Monday. But that, and not the rest of the things, might have been taken in by the Doctor, Tuesday. I had tried to get these things into the laboratory, a number of times.

(I was mistaken, when I stated before the coroner's jury, that I got the order on Mr. Foster, for the turkey, on Tuesday: the day was Wednesday; and, I went to one of the jury, Mr. Merrill, afterwards, and made the correction.)

Thanksgiving-day, I went down to Mr. Hoppin's wharf, and got a piece of lime for Dr. Webster, which he asked me for, on Tuesday; he wanted a lump, "as large as my head." It is nothing unusual for him to have it. I have procured it for him every winter.

At this stage of the proceedings, it being two o'clock, P. M., the Court adjourned till three and a half o'clock.

Afternoon Sitting. — Friday, March 22d.

The Court came in at half-past three, and the trial proceeded.

EPHRAIM LITTLEFIELD, — *Direct examination resumed.* I was in the cellar, in the forenoon of Thanksgiving-day, Thursday, for the purpose of getting the grape-vines out of the cellar, as the children had picked them off and scattered them all over the house. In the afternoon, I went to work to dig a hole through the walls under Dr. Webster's privy. I should think that I began, about three o'clock. I wanted to get under there, to see if anything was there, and to satisfy myself and the public; because, whenever I went out of the College, some one would say, "Dr. Parkman is in the Medical College, and will be found there, if ever found anywhere." I never could go out of the building, without hearing such remarks. All other parts of the building had been searched, and, if nothing should be found in the privy, I could convince the public, that Dr. Parkman had not met with foul play in the College.

I went down the front scuttle, with a lamp, to the back side of the building, where Mr. Fuller, and I, went the Tuesday before. The tools I used, were a hatchet, and a mortising-

chisel. I worked an hour, or an hour and a half, but found that I could not make much progress, with the tools I had. I got out two courses of brick, and then gave up the job for the night. Nothing further occurred, on that day. I was out that night, until four o'clock the next morning, at a ball, at Cochituate Hall, given by a Division of the Sons of Temperance. There were twenty dances, and I danced eighteen out of the twenty.

On Friday, I got up, a little before nine o'clock. My wife had called me, a little before eight, and wanted me to finish digging through the walls. I did not, however, get up, when she called me. While we were at breakfast, Dr. Webster came into the kitchen. He came in, and took up a newspaper, and asked, "Is there any more news? — do you hear anything further of Dr. Parkman?" He said, that he had just come from Dr. Henchman's apothecary-shop; that Dr. Henchman had said, that a woman had seen a large bundle put into a cab, that she had taken the number of the cab, and that they had found the cab all covered over with blood. I said, "There are so many flying reports about Dr. Parkman, that we do not know what to believe." Dr. Webster then went up stairs.

Some time in the forenoon, towards noon, I was up under the anatomical lecture-room, helping some men carry some plaster-busts, from Dr. Warren's museum, into Dr. Holmes's lecture-room, when I had some conversation with Dr. Henry J. Bigelow, about digging through the wall.

[Mr. Bemis here stated, that he proposed to ask the witness, "If he had sought, or had received any directions from the Professors having charge of the College, in regard to digging through the wall, before so doing?" Objected to, by counsel for the defence; but ruled admissible, by the Court.]

I asked Dr. Henry J. Bigelow, if he knew, that there was a suspicion about Dr. Webster. As near as I can recollect, he said, that he did. I told him, that I had commenced digging through the wall; and I understood him to say, "Go ahead with it." I told him all about Dr. Webster's keeping his doors shut from me. In a few minutes, I went into the demonstrator's room, and there found Dr. J. B. S Jackson, alone, at work. He is a Professor, also. I told Dr. Jackson, that I was digging through the wall; and he said, "Mr. Littlefield, I feel dreadfully about this; and do you go through that wall, before you sleep, to-night." He did not give me any directions about secresy. He asked me, "If I found anything, what I intended to do?" I told him, that I should go to Dr.

Holmes. Said he, "You had better not go to him; but go to the elder Dr. Bigelow, in Summer street, and then come and tell me. If I am not at home, leave your name on my slate, and I shall understand it."

In the afternoon, about two o'clock, I went and asked Mr. Leonard Fuller, if he would lend me a crowbar. He went and got it, and asked me what I wanted to do with it. I told him, that I wanted to dig a hole in a brick wall, to carry a lead pipe in, to let water pass through. He replied, "I guess you do." He said no more; and I took the crowbar, and left. I spoke jocosely; suppose that he suspected what I was doing. I went to the house, and locked every door, so that Dr. Webster, could not get in, nor any one else. I dropped the dead-latch of the front door, and put my wife to watch the doors, telling her to let no one in, unless she saw who it was. I told her, if Dr. Webster came to the door, not to let him in, unless she first went into the kitchen, and gave four raps on the floor to warn me; if anybody else came, not to disturb me.

I went down under the building, and went to work; probably, worked half an hour. Having blistered my hands with the crowbar, I went to the kitchen, got a pair of thick gloves to put on, and went down again. I then worked a spell longer; and, finding that I could not make much progress with the crowbar, I went to Mr. Fuller, and got a cold-chisel and a hammer. Both Fullers were present, and appeared disposed to accommodate me. I went to work again, and got along pretty rapidly. I got out three and a half courses, in length, of the bricks. Soon I heard a running, and a rap four times upon the floor, and I came up, as soon as I could, from under the building.

When I got up into the entry, I met my wife, and she said, "I have made a fool of you this time. Two gentlemen called here, and I thought that one was Dr. Webster; but they are Mr. Kingsley, and Mr. Starkweather. They are at the door now."

I went out, and talked with them, on the front steps. Mr. Kingsley asked me, What private place there was, that had not been searched? I told him where the place was; and Mr. Kingsley said, "Let us go into his laboratory." I told him that it was locked up, and that we could not get in. They then went away. I saw Mr. Trenholm, the police-officer, and, being well acquainted with him, I told him what I was doing, and that I should get through, in twenty minutes, or half an hour; and that if he would come back, I would tell

him the result. As I was going into my shed, I met my wife, and she said, "You have just saved your bacon, as Dr. Webster has just passed in."

I stood talking with Mr. Trenholm, some time, until Dr. Webster came out, which was a little before four o'clock. He came out into the shed, and spoke to both of us. He said, that an Irishman, had offered to change a $20 bill, on the Cambridge side of the bridge, to pay his toll of one cent. — They thought that it was an extraordinary thing, for an Irishman to have a $20 bill, and so they kept it. He said, that the Marshal had been to him, to ascertain, if he knew to whom he had paid such a bill, and that he could not be positive as to the matter. Upon this, he went off.

I left Mr. Trenholm; he was to come back in twenty minutes, or half an hour. I went under the building, again, requesting my wife to keep a close watch on the door. I took the crowbar, and knocked the bigness of the hole right through. I did not use the chisel and hammer. I had drilled a hole with a crowbar, before I went up, when Mr. Kingsley called. There are five courses of brick in the wall. I had trouble with my light, as the air drew strongly through the hole. I managed to get the light, and my head, into the hole, and then I was not disturbed with the draft. I held my light forward, and the first thing which I saw, was the pelvis of a man, and two parts of a leg. The water was running down on these remains from the sink. I knew that it was no place for these things. I went up, and told my wife, that I was going down to Dr. Bigelow's; and I told her what I had discovered. I locked the cellar-door, and took the key in my pocket, so that no one could get down until I returned.

My wife spoke to me first, when I came up, after I discovered the remains, and asked me, what the matter was? [The witness being here checked, by the counsel for the prisoner, the Attorney General insisted, that the statement of the witness's condition was proper, and he desired the ruling of the Court upon the point. Mr. Merrick said, that his objection was not to that bare fact, but to the repetition of conversation. The witness was directed, by the Court, to confine himself to his own recollection, and the description of his condition.] I was very much affected.

I locked the door, and went, as soon as I could, to Dr. Jacob Bigelow's, in Summer street. He was not at home; the girl came to the door, and I told her to ask Mrs. Bigelow, "If she knew where the Doctor was; as I wished to see him very much." Mrs. Bigelow, herself, came to the door, called

me by name, and asked me what the matter was. I then went directly down to Dr. Henry J. Bigelow's, in Chauncey-place. I found him in, and told him what I had discovered. He told me to come along with him, to Mr. Robert G. Shaw, Jr.'s, in Summer street. We went down to Mr. Shaw's; went into his study, and there found Mr. Shaw. (I did not call at Dr. Jackson's, until after I had been to Mr. Shaw's.)

The Marshal came in to Mr. Shaw's, and I told him the same thing, that I had told the others. The Marshal told me to go right back to the College, and he would soon be there. I went to Dr. J. B. S. Jackson's, wrote my name on the slate, and then went to the College, and got there before any of the other parties. I found Mr. Trenholm, and he told me, that he had been down, and seen the remains. The Marshal, and Dr. Bigelow, got there in ten or fifteen minutes after I got home. Mr. Clapp came before them, I believe.

The hole was about half-way between the floor and the ground. The aperture is about eighteen inches one way, and perhaps ten or twelve inches the other. From the privy-hole down to the ground, is a distance of some eight or nine feet. These remains were not found directly under the privy-hole, but had fallen outwards, towards the outer, or northern wall. The dirt had been thrown away from the walls, to keep it from pressing on them, and the trench is wide enough for two men to walk abreast in. [The witness here explained to the Court and the jury, by means of the diagram of the basement-story of the College, the position of the walls, privy-hole, and remains.]

There was no aperture, through which anything could flow in or out with the tide. The tide, however, penetrates the walls, and fills up the trench. The water flows into the vault, in consequence of the walls being strained by the pressure of Dr. Webster's coal. Sometimes the water remains in the vault, five or six feet deep, after the tide has fallen.

To the Attorney General. — Mr. Trenholm was able to get down the trap-door, while I was gone, from my wife's finding another key to the front cellar. The noise heard, when we were down under the laboratory, and when the Marshal took out his revolver, was made by my wife, and by the children running over the floor, overhead. I did not know it, however, till several days after.

To Mr. Bemis, again. — Before Dr. Webster was brought down to the College, that evening, Mr. Tukey, Mr. Trenholm, and myself, went into the laboratory, and uncovered the furnace. I put my hand into the furnace, and took out

a piece of bone. I do n't recollect, whether we went up into the back private room, before he was brought down. Mr. Trenholm was ordered by the Marshal, to stay there and watch, until Dr. Webster should come.

The party, with Dr. Webster, came about eleven o'clock. The front-door bell rang, and I went out of the shed-door, and saw the front steps all covered with gentlemen. An officer said to me, "We have got Dr. Webster here, and he is very faint." I opened the door, and Dr. Webster came in, apparently supported by two persons, one on each side. Dr. Webster spoke to me, and said, "They have arrested me, and have taken me from my family, and did not give me a chance to bid them good-night."

They wanted to go into the lecture-room, and I unlocked the door, and let them in. Dr. Webster was very much agitated; sweat very badly, and trembled, as I thought: he did not appear to have the use of his legs. I thought, that he was supported by the officers, altogether. When I unlocked the door, all passed in. I went down to the door of his back private room. They asked me for the key of the door. I told them, that "I did not have it; that Dr. Webster always had it." Dr. Webster said, that they had taken him away in such a hurry, that he had no chance to take his keys. Some one said, "Force the door." Either Mr. Starkweather, or Mr. Trenholm, went round with me, through the cellar, and up the stairs, and helped break the door open.

When Mr. Tukey and I went into the laboratory, to the furnace, previous to this, we had gone in by the laboratory-stairs door, which had been left open, for the first time, by Dr. Webster, that afternoon. When I went round with Mr. Trenholm, or Starkweather, I went that same way, — what used to be, the common way.

When I got into the back room, they wanted to go into the other private room, where the valuables were kept. I told them that I never had had a key of it; and Dr. Webster made the same answer as to the key, that he did in relation to the other door. I was asked, Where the key of the privy was? and I told them, "That they must ask Dr. Webster; as I never saw the inside of it, in my life." Dr. Webster said, "There the key hangs, upon the nail." Mr. Starkweather handed the key down to me. Mr. Trenholm and I, then went down the laboratory, to unlock the privy-door; but I found that the key would not fit. Mr. Trenholm said, "Let me have it;" and he tried it, with no better luck. I then went up, and told Dr. Webster, "This is not the key; it don't fit."

"Let me see it," said Dr. Webster. I did; and he said, "This is the key of my wardrobe; but the other is up there, somewhere." They hunted round for it, but could not find it; and then I understood Dr. Webster to say, that he did not know where it was.

The privy-door was broken open. I was hunting round for a hatchet, when the door from the back private room to the little room, was about to be broken open. I could not find the hatchet in the place where it usually hung, and asked the Doctor where it was. He said that it was down in the laboratory, in the sink; upon the floor of the sink. I went down and found it, and brought it up. The hatchet was a shingle-hatchet, and had a ring in the handle. I found it where Dr. Webster told me that it was. There was another hatchet found in Dr. Webster's drawers, in his little private room. As one of the officers was undoing it, Dr. Webster said, that it was new, and never had been taken out of the paper. We went down stairs, and broke open the privy. I can't say whether Dr. Webster was down there, or not, at that time.

When he got down into the laboratory, he asked for water. I got a tumbler, and handed some to him. When he took the tumbler in his hand, he trembled, and snapped at it, as a mad dog would; he did not drink any. One of the officers took hold of the tumbler, and held it to his lips. He got some water into his mouth, but it appeared to choke him.

Some one asked, "Where that furnace was, where the bones were?" The inquiry was put to me; I don't know who put it.—I went to the furnace, and uncovered it, taking off all the minerals which were upon the cover. I put my hand in, and took out a piece of bone, which appeared to be the socket of some joint. Mr. Pratt was there; somebody else took out some. Somebody said, "Don't disturb the bones." Mr. Parker, the County Attorney, and Mr. Gustavus Andrews, the jailer, were there. I think it was Mr. Pratt, that said, "Do n't disturb the bones."

After this, we went down under the building, and brought the remains up. Mr. Trenholm, Mr Clapp, and myself, went down for them. The party all walked into the front cellar, where the remains were deposited. Dr. Webster was led in, when the rest of the party came in, and stood within five or six feet of the remains. I heard Mr. Samuel D. Parker ask Dr. Gay, "If those were the remains of a human body?" Dr. Gay said, "He should think that they were." Dr. Webster appeared to be very much agitated; sweat very

badly, and the tears and sweat ran down his cheeks, as fast as they could drop. The party then went off.

Mr. Adams, Mr. Fuller, Mr. Rice, and Mr. Trenholm, were left in charge of the College, that night. I think, that there were four officers.

I received six lecture-tickets from Dr. Webster, and sold three, at $15, each. The money for Ridgeway's ticket, I paid over, on Saturday morning. The money for the other two, I had paid over, previously to that.

I recognize the slippers, [exhibited to the witness,] as Dr. Webster's. I have seen these, or a pair like them, for a year or two, about his back room. There was blood on them. I think that I never saw the saw, [exhibited to the witness,] until Saturday, after Dr. Webster's arrest. I was present when it was taken down from a rack, by the passage into the little private room.

[Mr. Bemis exhibited the saw to the jury, and showed them some marks on it. He said that Dr. Wyman had examined it with the microscope, and could not satisfy himself that the marks were blood; but he should submit it to them, for what it was worth. It had a red thumb-print on the left side of the handle, where the thumb would naturally press in using it. It was about eight inches long, and is such as is used by joiners for fine work. It was put into the case.]

I have seen the jack-knife found in the tea-chest, or one, exactly like it. Dr. Webster showed it to me, the Monday before Dr. Parkman disappeared. He said, "See what a fine knife I have got." He handed it to me, and I examined it. He said, that, he had got it to cut corks with. I said, "I should think that is just what you want, Doctor." I noticed at that time, the images of the deer, and the dogs, on the blade. I never saw it, before that Monday. I did not see it afterwards, until it was found in the tea-chest.

The Doctor's usual working-dress, was a pair of cotton overalls, and an old coat; the overalls were blue. Since the arrest, I have not seen them. He had them on, the first day the officers came to the College, Monday, or Tuesday. I cannot say how old, or how new, the overalls were. I always saw him have a pair on, when he was about his work.

I never knew, that the Doctor had the keys of any other doors, than those of his own rooms, and of the dissecting-room. I knew that a bunch of skeleton-keys were found, on Saturday, in his little back private room. I knew, also, that towels were found in the privy vault; — a diaper roller, and two crash towels. There were marks of "W."

on the crash towels. The diaper roller, I had known for two or three years. It was the only one of that kind, that Dr. Webster ever had. I wiped my hands on it, that Friday, when I went up and told Dr. Webster, that I could not get any blood at the Hospital. I had washed some glasses for Dr. Webster, and I wiped my hands on it, as it laid upon the table. I do not recollect, whether the roller was marked, or not. He had never had any other there. I had washed it a good many times, myself, and had got others to wash it for him. I was present when the towels were found. My impression is, that it was on Saturday. They were found in the privy-vault, near the remains; but how near, I cannot tell. [A bunch of skeleton-keys, found in Dr. Webster's private drawers, were here produced, and exhibited to the witness. But objection being made to their connection with the case, they were withdrawn for the present, and the witness not interrogated as to them.]

I have known no parts of human subjects, of any consequence, to be used in Dr. Webster's apartments. I have got a small piece of human muscle for him, as large as a finger, for the purpose of experiment. I never knew him to be engaged in anatomical experiments.

I have heard noises in his room, when firing off pistols by the galvanic battery, or exploding bladders filled with gas. I have been in his room, when these experiments were performed, and have always helped him perform them.

[The towels, found in the vault, were here exhibited to the witness, and the diaper roller identified. They were badly stained, and filled with holes; but, as admitted by the prosecution, the stains only afforded indications of acid, and not of blood.]

The cross-examination of the witness was about to be commenced, when, at six and a half o'clock, P. M., the Court adjourned, till Saturday morning.

FIFTH DAY.— *Saturday, March 23d.*

The Court came in this morning, shortly after nine o'clock. The jury were called, and the proceedings commenced.

EPHRAIM LITTLEFIELD, *cross-examined by Mr. Sohier.* — On Monday, the 19th of November, when the interview took

place between Dr. Parkman and Dr. Webster, it was not dark out of doors. The lights were burning. The interview took place in the upper laboratory. Dr. Parkman said, "Are you ready for me, *now*," or, "*to-night*?" "No, I am not, Doctor," replied Dr. Webster. He either accused Dr. Webster of selling something, that he had sold before, or said something about mortgaging a second time. He made a gesture with his hand, [imitated by the witness,] and said, "Dr. Webster, something must be accomplished to-morrow." This was, as he went out of the door, and while he was standing in the door-way. Dr. Parkman might have stopped there, a half an hour. He appeared to be a little riled; somewhat excited. I remained about an hour, and Dr. Webster left, after I did.

On Friday, November 23d, when I took the broom, to sweep up the Doctor's back room, I cannot say, whether I took it from behind the door, or not. There was no particular place for it. I know that I placed it behind the door, after I was done, and that I saw the sledge there, at that time. The sledge was left by masons, who did some work for Dr. Webster, the year before, — or, I first saw it, after they had got done. He had a flue torn down, and built up. I don't know, that the sledge was sent in from Cambridge. I mean to say, that both faces of the sledge were rounded. I never did anything with it. I never searched for it, until after Dr. Webster was arrested. I never thought of it, before. I then searched all over the building, and under it, for it. There is another sledge there, now; weighing two or three pounds, with one round face; I presume, that it belongs to Dr. Webster.

I generally dine at one o'clock, — at the time Dr. Holmes's lectures begin. I was detained on that day, the 23d, by examining the tickets at Dr. Holmes's lecture-room door. The students held the tickets in their hands, showed them, and passed in. I recollect being nearly crowded away from the door, two or three times, by them, as they rushed in. I should think that it took fifteen minutes, to take the tickets, as some of the students usually stopped in Dr. Webster's room some little time after the lecture was over, to ask explanations, &c.

The door shut after me in Dr. Ware's room. The door shuts itself, and shuts with a slam. I remained there, till three or four minutes of two. I did not go to sleep; did not lay there long enough to get asleep. I reclined with my head on my arm.

On Friday afternoon, I thought I heard some one walking

in the laboratory. The sound might possibly have come from the dissecting-room. I stood near the door; had tried to get it open. I can't say what I was listening for. I put my ear up to the door, and heard the water run. I have recollected it ever since. I thought that I heard footsteps. I went back up-stairs, and tried that door. When Dr. Webster came down, at half-past five, he must have seen me, as he passed within a foot of me. He did not speak to me, nor I to him. I left home that night, about six o'clock. I was not ready to go to the party, when I saw the Doctor. I can't tell precisely what time it was. I tried the doors after Dr. Webster passed, and before I went to the party. I tried them, to get in, in order to do up his work, wash the glasses, sweep up, and prepare for fires. It takes sometimes half an hour, and sometimes an hour; sometimes it is dirty work.

I am sure, that I bolted the outside door of the dissecting-room entry. I recollect examining the doors after I came home. I shut to the dissecting-room door, and it locked itself with the ketch. The lights were out, and the room appeared dark and empty. This was after I had tried the doors of Dr. Webster's apartments, and found them bolted. I tried all the doors, but the door between the lecture-room, and the back room, up stairs: that, I did not try. The Doctor had the key of that, himself. I tried Dr. Webster's doors three times, that afternoon.

I was at a ball on Thursday evening, November 22d, and got home at one o'clock. I can't say whether I was in Dr. Webster's rooms, any time that evening, or not. I may have been there. I can't say whether I have been into his rooms, other nights, that week, after he has left for the night.

Mr. Sohier. — Have n't you been in his room, playing cards, in the night?

Witness. — I decline answering that question.

Mr. Sohier. — Have n't you been in the habit of using his rooms, for gambling?

Witness. — I decline answering that question. But I can say, I have not seen a card in that room, this winter.

Mr. Sohier. — That does not meet my question. Have you not been in the habit of gambling, in his room?

Witness. — I decline answering that question; but I will say, that I have not played any cards, in his rooms, this winter.

Mr. Sohier. — Did not Dr. Webster discover, that you used his rooms for gambling?

Witness. — No, Sir. At any rate, he never spoke to me about it.

The Cochituate water was kept running all the week. It had not been so, before. The Doctor had requested us to use the water, before this, to keep the pipes clear; and I had also been in the habit of drawing off the water in cold nights, to keep them from freezing; but the Doctor objected to having the water run, at other times, as it spattered, and made the floor wet. I put the glass pipe, which the jury saw, there, under the cock, where the water was running; but I did it, since the arrest. I had put an earthen one there, before, and let the water run through it; but the Doctor forbade it, on account of the spattering.

I have changed my testimony before the coroner's jury, as to the time when the Doctor gave me the order for the turkey. I then said, it was Wednesday, about four o'clock.

Mr. Sohier. — Did you testify before the coroner's inquest, that the order for the turkey was given on Wednesday, before, or after the examination of the rooms?

Witness. — The order for the turkey was given on Tuesday; and I examined, on Wednesday.

Mr. Sohier. — But did you testify, that it was before, or after, you examined his rooms?

Chief Justice. — You are assuming something, that he has not testified.

Mr. Sohier. — May it please Your Honor, he testified before the coroner's inquest.

Chief Justice. — He has not testified, that he made the examination on the same day that the turkey was ordered, Tuesday.

Mr. Sohier. — The Court somewhat misunderstands my question.

Chief Justice. — You inquire, whether it was before, or after.

Mr. Sohier. — The witness has now stated, that he made the examination of Dr. Webster's rooms, on Wednesday afternoon. He has also now stated, that Dr. Webster, on Tuesday, gave him an order for the turkey. He now states, that he stated before the coroner's inquest, that it was given on Wednesday. And I ask, whether it was before, or after, he made the examination of the rooms, that he stated, before the coroner's jury, that the order for the turkey was given.

Chief Justice, — to the witness. — You now think this order for the turkey, was given on Tuesday?

Witness. — It *was* given, on Tuesday.

Chief Justice. — Had you *then* been into the rooms, to make the examination?

Witness. — I went in, for *that*, on Wednesday.

Attorney General. — He made the correction before the grand jury, when he said, that the order was given Tuesday.

Chief Justice. — The mistake was, then, in considering that the order was given on Wednesday.

Mr. Littlefield resumes. — I do n't know that I have made any other mistakes before the coroner's jury, which I have had to rectify. I made some memorandum of my testimony, before going before them; and have written down some, since: but only the heads of what I testified to, yesterday. I had got it written down, that the order for the turkey was on Wednesday; but do n't know how I came to get Tuesday and Wednesday confounded together. I do n't recollect any other mistakes, or alterations of my testimony, as to Wednesday. All along the week after Dr. Parkman's disappearance, and after Dr. Webster's arrest, I began to think over and recollect the facts which I have testified to. I began it Sunday night, the 25th, after the conversation with Dr. Webster. I told my wife, that night, that I was going to watch every step that he took. I went into the bed-room, and told it to her there, after I had told her about the conversation. I had been hunting round that day, for Dr. Parkman; in the empty houses, &c. I never thought of the reward, then. I did not know that one was offered. I knew, during the week, that rewards were offered. I never told any one, that I meant to get the reward; never told Dr. Webster so, and I defy any one to prove it.

[The Chief Justice again interposed, as to the propriety of a question put by the counsel for the defence, as assuming a statement to have been previously made by the witness.]

I did undertake to recollect the facts that excited my suspicion, but I did not write them down, till after the coroner's inquest.

When I had the conversation with Dr. Webster, Sunday evening, I was standing on the left side of Grove street, as you approach the College. Dr. Webster was on the north-west side. When I first saw him, he was abreast of a house called Susan Bryant's. He left the platform, and came right up, and asked me the questions to which I testified yesterday.

It was about sundown. I can't say that I examined his face very particularly. He looked pale; he did not look at me, when he struck his cane down on the ground. I undertake to say, that I suspected that Dr. Webster had had something to do with the disappearance of Dr. Parkman. I did

not know that Dr. Parkman had been in the College, until Dr. Webster told me so, himself. I suspected that Dr. Parkman had been murdered by some one. "That is the very time that I paid him $483, and some odd cents," were the words of Dr. Webster. He said, "I counted the money down to him, on my lecture-room table. — He grabbed the money up, and ran up two steps at a time, as fast as he could. — Dr. Parkman said, that he would go and discharge the mortgage; but I have not been over to Cambridge, to see." — And, "I never knew that Dr. Parkman had disappeared, until I read it in the Transcript; and I am come over to see about it, as I am the unknown gentleman referred to."

On Monday, my wife told me, that Dr. Samuel Parkman had called, and was with Dr. Webster. She told me, that Dr. Samuel Parkman had asked for me. I went right up to the laboratory, where the two were. I don't know as I thought over anything, at that moment, particularly, of what had occurred previously, between Dr. Webster and myself, Sunday evening. I did not stop there, half a minute. I was thinking over the matter, all the time, more or less. I suspected that Dr. Parkman had met foul play, at the hands of Dr. Webster. Dr. Parkman saw me, as he nodded. I did not think it proper to go out through the lecture-room, as it would have crowded both gentlemen out of their places; so I went down the laboratory-stairs.

It was but a short time after Dr. Samuel Parkman left, before Mr. Parkman Blake called; not so long, as half an hour. When I let him in, I went round up through the laboratory, by the door at the foot of the stairs, and found Dr. Webster at his table. I opened the lecture-room door for him, and he afterwards went out that way, as near as I can recollect.

Monday, Mr. Kingsley and Mr. Starkweather called, about twelve o'clock. They were let in at the lecture-room door. I knew that the lower doors were locked at that time, and so went to the lecture-room door. I went in with them. The Doctor came and opened the door, and put his head out. We all went in together, to the laboratory, but I cannot tell whether he went behind or before. I went round with the officers; was watching Dr. Webster, some, to see how he appeared. I believe I went into the back room, first, and that they all followed me. I don't know whether Dr. Webster went down stairs, or not. I let them out at the lower door, and went out with them. I can't say, whether I saw Dr. Webster that day, again, or not; I heard him in his room; but can't say, at what hour.

On Monday night, I went down to Mr. Grant's dancing-academy; went down, the first of the evening. I tried Dr. Webster's rooms before I went down: I had tried them all along through the afternoon; — not every moment, but at various times. I wanted to get in and do up his work: that was all my object. I could n't conceive, why he kept his doors fastened so.

I did not see Dr. Webster go into his rooms, on Tuesday morning. I unlocked his lecture-room door, and found him at work, at half-past nine or ten. I passed down to his table, and he went towards his back room. I looked in, and saw that he had a fire; asked him if he wanted a fire in his furnace, and he said, "No; that his lecture for that day, had some things about it, that would not bear much heat." I went out through the lecture-room door, as I have before stated.

I should think that it was about eleven, when Mr. Kingsley, and officers, Clapp, &c., called. Dr. Webster let them into the lecture-room, himself. I went down stairs with them, and the Doctor went down, also. I do n't recollect hearing the Doctor say a word, in the upper room, except the remark about his little room, — about "the dangerous chemicals," &c. After we went down stairs, there was something said, about the whitewashed pane of glass. I thought, at the time, that Dr. Webster tried to lead them away from the privy. When Mr. Clapp asked, "What place was that?" Dr. Webster started right off to the door, at the front part of the laboratory, into the store-room, and said, "Here 's another room." This was after I said, that Dr. Webster had the key of the privy. I saw Mr. Kingsley, in the laboratory, looking round. I remember seeing him in the recess, where the minerals and tea-chest were. I do not recollect seeing any body examining the minerals. I thought that the Doctor tried to hurry us out, as soon as he could. We went out into the store-room, and then into the dissecting-room entry. The key to the dissecting-vault is kept in a dark corner, standing up on the bricks, at the corner of the vault. That was always my place for it. No one could easily find it, who did n't know where it was kept. I saw no more of the Doctor, till afternoon.

Tuesday afternoon, when I saw Dr. Webster come into the College, I went back into the entry, to see if I could hear him come down, and go into his laboratory. I heard him unbolt his door. I can't tell which bell he rang. There are bells in my room, communicating with all his rooms. I went

directly up; should think it was about four o'clock. It was not dark, when I got back from Foster's. I did not see Dr. Webster, after I got back.

I never got into the Doctor's laboratory, before, by the window. It is the outer door, of the two doors by the laboratory-stairs, which has the bolt on. I was mistaken, in saying that I did not see the Doctor, again, Tuesday afternoon, after he gave me the order for the turkey; the conversation about my being a free-mason, was the same afternoon. I saw him, about six, again, that afternoon. I may have said, that it was as late as six, before the coroner's inquest, as I got the day wrong about the order. I cannot say now, positively, whether it was before, or after, six: it was some time after I had got home with the turkey. I am positive, that the conversation about my being a free-mason, was after I received the turkey.

I may have tried the doors, after I got back from the lodge; I can't say. It was as late as eleven o'clock, when I got back. I had no occasion to try the doors. I had had no glasses to wash, since the Friday previous. I guess there were not many glasses there, after Friday, as Dr. Webster only delivered one lecture, after that day. There were some, after his arrest, which I emptied of water, to prevent their freezing.

I do n't recollect saying before the inquest, "That I heard some one in Dr. Webster's rooms, about one o'clock, Wednesday afternoon." I did say, "That I returned with my wife, about one." I do n't recollect hearing any one there, at that time; and do n't think, that I swore so. Before I went out with my wife, that morning, at nine o'clock, I tried to look under the door. I saw Dr. Webster when he came in, that morning. He had told me, the night before, that he should n't want any fires that week. I knew that he always wanted a good fire, being a cold-feeling kind of a man, and I thought it very strange, that he should be in there without a fire; especially, as I thought that it was a cold morning.

I do n't recollect hearing any one in his laboratory, at four o'clock, that afternoon, and did not state so, before the coroner's jury.

When I tried to look into the laboratory, in the morning, I did not watch any great time. I heard Dr. Webster stop, when I was at work with my knife, and this was why I thought he heard me. This was before I heard the coal-hod. I heard him move it on the floor, and this was after I laid down on the bricks. I said, that I saw him go to the furnace.

The cylinder did not lay upon the furnace, when I went

into the laboratory, in the afternoon, but upon the sand-bath. The heat of the wall, I thought very strange, as I never knew any heat to be there before. I went into the room, but I did not uncover the furnace. I went in, because I thought that the building was on fire. There did not appear to be much fire there. When I put my hand to the wall, it was on a place about half a foot higher than my head. The furnace is about three feet high, and the heat I felt, was above my head. The flue runs up. When I got into the laboratory, there did not appear to be much fire in the furnace. There had been no fires in the large furnace, since Friday. I did not uncover the furnace, because Dr. Webster had told me never to touch articles, except placed upon a particular table. The soap-stone cover, had some crucibles and mineral stones upon it: there were none of the stones in paper. I know that the furnace was pretty hot; and the bricks were hot; but I can't say that there was any fire in the furnace. I did not look at the ashes.

The hogsheads were made for the manufacture of gas. They had never been used. I took the broom from the corner of the coal-bin. I did not know but that Dr. Parkman might be in the hogshead. I found two-thirds of the water gone. I did not not think of finding anything in the furnace.

I can't say what kind of a lock was on the privy; I never saw it. I believe, that Mr. Clapp has it. I believe, that I had under my control, sixteen keys. I did not try to get into the privy, that, (Wednesday,) afternoon; I had no key to it. If I had had a key to it, I should have tried to get in. I should not think, that the lock to the privy, was a common one. I made no attempt to find any keys to fit the privy-lock, while in the laboratory. I was not in the room more than ten minutes. Wednesday night, I went to a cotillon party.

When I got into the laboratory, I went up to the Doctor's back room. I thought the spots upon the floor, suspicious. I noticed spatters on the stairs, more than anywhere else. They were rather red, then. I put my finger down, and tasted of them. I thought, at the time, that the spots were blood; and that something had been put on to disguise them. I thought the spots upon the floor of the upper laboratory, were suspicious. I had never seen them there, before. The little room was fastened; and the door into the lecture-room, locked, so that I could not get through, without breaking the door. I communicated the facts about the heat, and the hogsheads, &c., right away to my wife, as soon as I got into the kitchen. I communicated them to Doctors, Bigelow, and Jackson, on Friday.

I did not have much to do, on Thanksgiving-day. I tried the doors; but did not try to get in by the window. I did not see Dr. Webster on Thursday; but I did not know, but that he might come in. I was about, on Thursday; did not take any one in, to examine the laboratory. Before Thursday morning, I had communicated my suspicions to Dr. Hanaford, the physician, whose office is in Bowdoin-square. On Tuesday night, as I came home from the Lodge, I was with him, more than an hour. Up to Thursday morning, I had communicated my suspicions to no one, except my wife and Dr. Hanaford, and a man named Thompson, who worked for me. On Thursday afternoon, I communicated them to Mrs. Harlow, who lives near the College, and who lent me some tools to break through the wall with. On Friday, I told them to Mr. Trenholm, and to Drs., Bigelow, and Jackson. I told Mr. Trenholm, after I came up from work from under the building, after Messrs. Kingsley and Starkweather went away.

I got home from the party on Wednesday, at ten, or half-past ten, in the evening. The first person to whom I mentioned, that we could not get under the building, except by breaking through the wall, was Mr. Fuller, the officer, on Tuesday, when we were under the building, looking about.

I did not wish to take up the floor in the entry, to get under the building, as the students would be passing through the entry into the dissecting-room. The place would have been, where I had told Dr. Webster, that the workmen had got under, before. The bricks of the floor are laid in mortar. The upper laboratory-floor bricks are laid the same. I saw the floor removed, when the police had charge of the building. I did not see any more sand than would naturally be with the bricks.

To a Juror. — The mortar was laid upon the floor, and the bricks laid on it, and none came up between the joints. There was sand placed all over the brick floor, and swept, so as to fill the cracks.

Mr. Littlefield, resumes. — The remains, were two or three feet, from a perpendicular line let fall from the privy-hole. I did not get in through the opening which I made in the wall, at first, but only put my head in.

I have seen the knife with the silver sheath, about the premises, in the little back private room. I saw it there, last winter. The Doctor kept his tools in that room, which I did not enter, more than once. I fix the time of seeing the jack-knife, on the Monday before Dr. Parkman disappeared. I did

not see it from that time, till it came out of the tea-chest. I took it into my hands, on the Monday referred to. I don't recollect his telling me, that he got it to cut grape-vines with. I have seen the Doctor cut corks, with a knife, or something else. I have got twine for Dr. Webster. I never got any blood, before, for him, either during this course of lectures, or at any other time. He may have had blood, before, but I do not recollect of getting it for him.

I had no particular signal with the Doctor, to get into his room. If anybody called, I used to knock on the door. I sometimes found the lecture-room door bolted; but seldom. I did not knock on Friday. I tried the doors, and did not think it proper to knock, simply for myself. When he was at work, I never attempted to force my way in.

I did not attempt to be more accurate in my testimony before the coroner's jury, than now. I did go to Mr. Merrill, one of the jury, to correct my testimony about the turkey. I don't recollect of going to correct anything about Tuesday's search.

I may have made some minutes of testimony before the coroner's jury was held: I did, afterwards. I kept the minutes to look at. I never wrote the heads off, but once. I did not examine the minutes every day. I have read, a number of times, my own minutes of testimony before the coroner's jury: — not a hundred times; but twenty times, I guess. I kept it in a drawer, where I kept cigars, and frequently went there, to get articles. I have never had a copy of my own statement before the coroner's jury. I never read in the book, (exhibited by counsel) the statement which I made before the coroner's jury. It was my own minutes, that I saw. I never *heard* the book read, that I recollect of.

[Mr. Sohier here read extracts from his copy of the testimony before the coroner's inquest, to show some contradiction as to the witness's statement, about returning with his wife, Wednesday, at one o'clock, and hearing some one in the laboratory. On explanation, the apparent contradiction was seen to arise from the mis-punctuation of the copy, and the subject was dropped.]

To Mr. Merrick — [who exhibited to the witness, the handbills offering a reward for the discovery of Dr. Parkman.] I saw the advertisement, by Mr. Shaw, offering $3,000 reward, on Monday. I took one, and carried it down to the College, and showed it to Dr. Ainsworth. I also saw the $1,000 handbill. I met Mr. Trenholm distributing them. I I saw these handbills stuck up in great numbers about all the

College, and the sheds in its vicinity; more there, than anywhere else, within the same extent.

[Here the counsel for the defence, intimated that they had no more questions to put to the witness; and the Court took a recess, for a few minutes. Subsequently, on the resumption of the session, Mr. Merrick stated, that he had another inquiry or two, to make of the witness, and he resumed the stand.]

Mr. Littlefield, — Cross-examination continued: — to Mr. Merrick. — I was at the toll-house on Craigie's Bridge, Sunday afternoon, about dark; was there with Mr. Todd, on the way to East Cambridge. I do n't recollect saying, in any conversation which I had there, that I saw Dr. Parkman come into, and afterwards go out of the College. I never said so; for I never saw him enter, or go out. I never said, there, that I saw Dr. Webster pay him any money; nor that I knew that he had so paid him. I do n't remember seeing a Mr. Green in the toll-house, at the time.

Re-examined by Mr. Clifford. — I did not see the first advertisement in Saturday evening's newspapers. I never have made, or intended to make, any claim for either of the rewards which have been offered. I have so declared, and now state, that I disavow all claim, henceforth.

As to the day, when Dr. Webster gave me the order for the turkey, I happened to speak to my wife about its being Wednesday, and she said, that I was mistaken; that it was Tuesday. I then went to Mr. Foster, and found the date of the charge, the same as that upon the order. It was voluntary on my part, going to Mr. Merrill to correct my evidence; without consultation with any government officer. I only went once to correct my testimony. I was two days in testifying before the coroner's jury. I signed the book, and my deposition, at the same time.

The first time, that I ever saw the cuts, or hacks, in the sink, on the laboratory-floor, was that Saturday, after Dr. Webster's arrest. They may have been there, before, but I never saw them.

I never knew Dr. Webster to have any other keys, than those of his own rooms, and of the dissecting-room. A key to the front door, was found in Dr. Webster's private room, after his arrest. I only knew, that Dr. Leigh, and myself, had one.

To a Juror. — It was after I saw Dr. Webster, Sunday evening, that I went over to the toll-house; it was after dark.

To the Foreman. — I do not know, that any ice was ever

cut out of the sink, in the laboratory, on account of its being allowed to freeze up.

Re-examination, again. — Among the keys, found in Dr. Webster's drawer, was one fitting the lower front door, as well as one fitting the upper. I first saw the hacks in the sink, on Saturday, after the arrest. [It was stated to the Court, that these hacks had been pointed out to the jury, on the view.]

To the Defence, again. — When I saw the cuts in the sink, I was looking for them. A piece was cut out, by the secretary of the coroner's jury. I have known ice to be *placed* in the sink; have broken it up there, for Dr. Webster. I know of no one's having keys to the front doors, but Dr. Leigh, and myself. The other professors may have had them; but I never knew of it.

Andrix A. Foster, sworn, — examined by Mr. Clifford. I am a provision-dealer in Court street, in this city.

I supplied a turkey to Mr. Littlefield, on Dr. Webster's order. It was on Tuesday, November 27th. I should judge, it was between half-past three, and four o'clock. I have not got the order. It was torn up. I hardly ever keep such orders. The order read pretty much like this: — "Please deliver Mr. Littlefield a nice turkey, weighing, (I think,) eight or nine pounds, and charge the same to me. — Dr. Webster." There was another order, for a bushel of sweet potatoes, to go by Mr. Sawin, to Cambridge. I identify the charges, upon my books.

Cross-examined, by Mr. Sohier. — I communicated these facts to Mr. Littlefield, a week, or two, after Dr. Parkman's disappearance, in my shop. He came to ascertain the day on which he got the turkey. I think, that he may have said, that he was mistaken in the day.

Caroline M. Littlefield, *sworn, — examined by Mr. Bemis.* I am wife of Mr. Littlefield, janitor of the Medical College: we occupy part of the cellar-story.

I knew Dr. Parkman, by sight. I heard of his disappearance, on Saturday, or Sunday. I know that I heard of it as early as Sunday, because my husband spoke of it, that day. I think I heard of it, the day before.

[Witness was asked, If she cautioned her husband, on Sunday, to conceal his suspicions from all persons? Counsel for defence objected to this question, as the introduction of testimony dependent upon conversation. A brief argument took

place, when the Court decided, that the fact of the communication of the caution was proper; though accompanying conversation, would not be.]

On Sunday afternoon, after tea, Mr. Littlefield went out, and, after a while, came in again. He came into the kitchen, and beckoned me to come into the bed-room. He there said to me, that "He thought, just as much as he was standing there, that Dr. Webster had murdered Dr. Parkman." [The witness was checked, as to repetition of Mr. Littlefield's statements, and told to confine herself to her own caution to him.] When I had asked him, what made him think so, I told him, "Never to mention it again, or even think of such a thing; for, if the professors should get hold of it, it would make trouble for him."

I do n't know, that I noticed anything particular about Dr. Webster's apartments, until after my husband told me his suspicions; but after this, I recollected that the laboratory-stairs door had been fastened, during Friday, or Saturday. The first that I ever knew it to be fastened, was on Friday afternoon, the 23d. This was the only door, that I had occasion to know anything about. About the commencement of the lectures, Dr. Webster asked me, if I would not get the water from his laboratory, because, he said, the water was not clear; the pipes were new, and he did not like to leave it running, as it spattered his floor. Somewhere about four o'clock, on Friday afternoon, I sent a little girl to get water, that way, and she came back, and told me, that she could not get in, as it was all fast. I told her, that she must be mistaken, but I went with her, and found the door really fastened.

I recollect the door being fastened, Saturday morning, when I went to get water for breakfast. I had occasion to go for water, more than once, during that same day, Saturday, and found the door still fastened. I could get the same water in our cellar; but as Dr. Webster had requested me to get it from his pipe, I tried to do so.

I do n't know whether I went to the door, for water, on Sunday. On Monday morning, Dr. Samuel Parkman came to my kitchen-door, and asked for Mr. Littlefield. I told him that he was about the building somewhere. He then asked for Dr. Webster; and I told him, that I thought he was in, as I saw him pass up a few minutes before.

I showed him the way, and I went to the door, — the laboratory-stairs door, — though I did not know whether he could get in. But the door was open, and Dr. Samuel Parkman went up. I do n't know as I told Dr. Parkman the

reason, why he probably could not get in, though I think I did. Shortly after, I went to the door to get water, and found it fastened. I never tried the other door; only the one from the cellar to Dr. Webster's laboratory.

I think that it was the same forenoon, though I am not so sure, that the express-man brought a bundle of grape-vines, a box, and a bag, and placed them on our cellar-floor. He had never left things in our apartments so, before; but had always carried them to Dr. Webster's apartments, himself.

At other times, when Dr. Webster was out, the express-man would get in, by means of a key hung up near the door. This time, the articles were left in our apartments. I do n't know where the key was, that morning. I do n't recollect anything in particular, about going to the doors, though I tried them a number of times. I remember, that, on Thursday, the doors were locked. I then asked Mr. Littlefield to put the grape-vines into the laboratory. He said, he could not, as the doors were all locked up; and he went to the door, and shook it, and said, "You see, I cannot get in." The grape-vines, and the box were there: whether the bag was, or not, I can't say. The grape-vines were in my way, and the children were getting them all over the rooms.

On Wednesday, I saw Mr. Littlefield listening, and trying to look through the key-hole. When he saw me, I told him to come away, and I asked him — [Further answer arrested.]

Mr. Bemis. — Please to state, whether you have seen your husband attempt any other modes of gaining information about Dr. Webster, except by looking through the key-hole?

Mr. Sohier. — We object.

Mr Bemis, — to the Court. — The inquiry was, whether the witness had seen Mr. Littlefield, attempt to do anything further, to ascertain whether Dr. Webster was in his laboratory.

Mr. Merrick. — It would be to corroborate their own witness; which is not allowable, unless he has first been impeached. We do not object to the Government offering evidence to show that Mr. Littlefield tried the doors; but if they propose to show that he was lying down, we object.

Attorney General. — I suppose, that anything which goes merely and exclusively to corroborate Mr. Littlefield, is not admissible; but that any fact which goes to show that Dr. Webster was in his room, or anything which Mrs. Littlefield witnessed, showing that there was a difficulty of access to his apartments, is proper.

Mr. Bemis. — And we offer it no more to prove that Mr.

Littlefield did this, than to prove that any other independent person was doing the same thing.

[The Court ruled, that anything which the witness had *observed*, might be stated, but not her conversation with Mr. Littlefield.]

Mrs. Littlefield, resumes.—I did not see Mr. Littlefield lying down at the door. I only saw him listening; and when he saw me, he came away. I did not see him get into the laboratory, that afternoon.

I saw Dr. Webster pass through our entry, Monday, Wednesday, and Friday mornings. Wednesday morning, I saw him turn to go up the front stairs; not through the laboratory-door, as usual. Can't say, at what hour he came to the College, Friday morning. We had a rather late breakfast, as Mr. Littlefield had been out, the night before, and did not get up; I had tried to call Mr. Littlefield up, earlier. Dr. Webster came into our kitchen, took up a paper, and said, "Mr. Littlefield, have you heard anything of Dr. Parkman?" My husband replied, "No; I have not," as near as I can recollect. The Doctor then went on to say, "That a woman had seen a large bundle put into a cab; that the number of the cab had been taken; that they had been to see the cab; and that it was all covered with blood."

Mr. Littlefield replied, "There are a great many stories flying about; one does not know what to believe:" and he then said to me, that Dr. Webster knew a great deal more about it, than he pretended; but this was after the Doctor had gone out.

I knew of Mr. Littlefield's beginning to dig through the wall, Thursday. He went to borrow tools. Mrs. Harlow brought him an axe. I saw him go down, and should think that he was digging about an hour, Thursday. About three o'clock, Friday afternoon, he commenced again. I had to watch the doors, both days, to see if Dr. Webster should come along.

After the doors were all locked, and Mr. Littlefield had been digging three-quarters of an hour, or so, Friday afternoon, I thought I saw Dr. Webster, through the window, coming. If Dr. Webster came, I was not to let him in, until I had struck four times with a hammer which I had. When Mr. Kingsley and Mr. Starkweather went by, I thought that it was Dr. Webster, and struck four times, and Mr. Littlefield came up. While Mr. Littlefield was out, talking with them, in the shed, Dr. Webster came to the College, went to the door of the laboratory, and unbolted it. I heard him unbolt

it, and take in the grape-vines, and then he went away, leaving the door unlocked, as he had usually done before the disappearance of Dr. Parkman. I saw the door standing a little ways a-jar. Dr. Webster went directly out; he had not been in the building but a few moments. I saw him pass through the entry, but could not tell by which door he went out. While the Doctor was in the laboratory, Mr. Littlefield continued talking with the police-officers. He then came in, and went to digging, again, and had not been more than ten minutes under the building, before he came up.

He seemed to be very much affected, more than I ever saw him before, in my life. I said —

Mr. Merrick. — We object to conversations.

Attorney General. — I think, may it please Your Honors, that it may be a matter of some consequence, in the course of our examination, to show certain facts, which consist partly in appearances, and partly in conversations, but which are yet facts, having a material bearing on this issue, and which, as facts, are admissible testimony. If it is intended to be intimated here, under any pretence, that Mr. Littlefield assumed to have found those remains, or anything which implicates him in the crime, it is most material to show what his appearance was, when that discovery was first made; what he did, when he came out of that cellar, in reference to this subject-matter, and when he found Dr. Bigelow. These are matters of fact, and not of relation. They are a part of the *res gestæ;* substantially so, at least. Suppose the jury to be satisfied that these remains were those of Dr. Parkman. It appears from this evidence, that they must have been there, either with the knowledge of Littlefield, or Webster. Now the conduct of Littlefield, at first, is important; and it is proper to be testified to, as much as the language of a person when he comes away from a place, in which it is charged, that he committed a homicide. Would it not be admissible for him, in such a case, if he is to be tried for the offence, to produce testimony, as to what he said at first? I see no difference between such a case and the present, where the party is the witness, and not the defendant.

Mr. Merrick. — We had supposed, that precisely this question had arisen, and been determined by the Court. Mr. Littlefield was called upon to testify as to what he said, and we have not objected to that. But we object to other conversations, designed to corroborate him. The Court sustained us, on the last occasion, as to excluding conversations between the two; and we can see no difference between the ruling then, and that asked for, now.

Chief Justice, — *(after conference of the Court.)* — It appears to us, that it is competent to show Mr. Littlefield's manner, and conduct, and appearance ; but not to give his conversation.

Mr. Bemis, to the witness. — Please to state, then, what were his manner and appearance, when he came up, after discovering the remains.

Mrs. Littlefield, resumes. — When he came up, he appeared very much affected. He was more affected, than I ever saw him before, in my life. He bursted (burst) out a-crying, and said — [The witness was checked, and told, that she must not repeat what he said. "I can't say anything else, then," she ejaculated, earnestly.]

Mr. Littlefield did not leave immediately, as he was not able to go. But, shortly after, he locked up the doors, and went away.

Mr. Trenholm, the police-officer, came in, in five or ten minutes after Mr. Littlefield went. He asked for Mr. Littlefield ; and I told him that he was gone to Dr. Bigelow. I unlocked the cellar-door with the key of another door, and Mr. Trenholm went down. He had not been gone more than five minutes, I should think, before he came up, and said, there was no mistake — [Witness checked.] Mr. Trenholm remained at the College, until Mr. Littlefield and Mr. Clapp returned. No one else went down, while Mr. Littlefield was gone. I was about the house, somewhere, until Mr. Littlefield returned with the officers. I recollect going into the store-room for a pail of water, while the officers were there ; think, my little boy and girl followed me. After the officers came, I went into my own apartments, not wishing to hear or know anything more about the matter. I never saw any bed-clothes brought there by the express-man.

Cross-examined by Mr. Sohier. — I think that it was after dark, when I went after the water. The boy, my own child, is four years of age, the little girl about eight : the little girl is not mine, but lives with me. Sometimes the little boy sets up late ; sometimes he goes to bed early ; that night, we were in so much confusion, that, perhaps, he did not go to bed before twelve o'clock. I recollect going for the water, because I did not wish to go by the scuttle, or trap-door, where the officers had gone down. I do n't know whether the bag was tan, or not, or whether I ever saw any tan in the laboratory, or not. When Dr. Webster carried these articles in, I do n't know how long he remained. I did not see him take the articles in ; they were there when he went in, but were gone after he left.

We always had a turkey for Thanksgiving-day, and Mr. Littlefield said, Tuesday, that Professor Webster had given one to him for Thanksgiving. When he afterwards mentioned about the turkey, I corrected him, as to the date; this was before the coroner's jury was held. I do n't know what he testified before them.

JOHN MAXWELL, *sworn, — examined by Mr. Bemis.* I live in Fruit-street Place. I know Mr. Littlefield. I knew Dr. George Parkman. He lived in Walnut street.

I recollect Mr. Littlefield's getting me to take a note to Dr. Parkman the same week that he disappeared. I do n't remember the day; but it was the fore part of the week, and about twelve o'clock in the day. I carried the note to Dr. Parkman's house, and delivered it into his own hands.

JOHN HATHAWAY, *sworn, — examined by Mr. Bemis.* I am the apothecary, and have charge of the medicines, at the Massachusetts General Hospital.

Mr. Littlefield made application to me for some blood, the week before Thanksgiving; I think, on Thursday, the 22d. I was not able to furnish it.

Cross-examined by Mr. Sohier. — I fix the day, by there being only one more chemical lecture that week. I attend the medical lectures; attended Dr. Webster's, with the rest of the course. I do n't remember the subject of his lecture, Friday, the day of Dr. Parkman's disappearance.

At this stage of the proceedings, it being now two o'clock, P. M., the Chief Justice directed the sheriff to swear a sufficient number of officers to take charge of the jury during the adjournment, and three were sworn accordingly. His Honor then addressed the jury, alluding to the necessity of adjourning over for the Sabbath, and for the remainder of the day, for necessary relaxation, and cautioned them against discussing or conversing about the case, as only one part of one side had yet been presented. He then directed the sheriff to provide as well for the wants and comfort of the jury, during the interval, as the nature of their situation would admit of.*

The jury were now conducted to their room, and the Court adjourned over till Monday.

* NOTE. — The jury, at their request, and by permission of the Court, were allowed to attend public worship, on Sunday, in custody of the officers. — Precaution being taken by the sheriff to assure himself, through inquiry of the officiating clergyman where the jury wished to attend, of the absence of all allusion to matters connected with the trial, in the religious exercises.

SIXTH DAY. — *Monday, March 25th.*

SARAH BUZZELL, *sworn, — examined by Mr. Bemis.* I know Mr. and Mrs. Littlefield. I am a niece of Mrs. Littlefield.

I recollect making a visit to them, last fall. I came on the 19th of November, and went home the 27th. My home is at Medford. While at Mrs. Littlefield's, I recollect hearing of Dr. Parkman's disappearance. I heard of it, Friday; heard them talking about it, also, on Saturday, Sunday, and Monday.

I went to the door on Friday, between four and five o'clock, to let a gentleman in; the front door. I have since ascertained his name, — Mr. Pettee; I did not know his name, at that time. As I was sitting in the kitchen, the door-bell rang. As Mr. Littlefield was lying down, and Mrs. Littlefield had gone out, I went to the front door, myself. When I got there, the key was not in the front door, and I did not know where to find it. The door was locked. I looked through the side-lights, and saw a gentleman, who asked for Mr. Littlefield. I told him that Mr. Littlefield had laid down; but that if he would go round to the other door, I would call him. He went down to the other door. I then went down stairs to the bed-room door, and called Mr. Littlefield. As I was passing into the entry, I saw Mr. Littlefield come out of the bed-room door, in his stocking-feet. I then passed into the kitchen, and Mr. Littlefield went to the door.

Cross-examined by Mr. Sohier. — I recollect that it was between four and five o'clock, because Mr. Littlefield had laid down, after the lectures that afternoon, and I was reading. Mr. and Mrs. Littlefield were out at Medford, about a fortnight ago, speaking about the matter, and father asked me if I recollected anything about it; and I stopped and recollected of the day, — the only time that I went to the front door.

Direct, again. — I am not sure, that it was Friday, that I first heard of Dr. Parkman's disappearance. I had not heard of it, when I went to the door.

JOSEPH W. PRESTON, *sworn, — examined by Mr. Bemis.* I am a student of medicine; have attended the last course of medical lectures; — Dr. Webster's, among the others.

I recollect when the talk was, about the disappearance of Dr. Parkman. I recollect seeing Dr. Webster, Friday, the 23d, after the lectures were over, about six o'clock. I saw

him about ten or twelve feet from the carriage-shed on the east side of the building, and entering the shed. I am not able to state, whether he entered the College, or not. I am perfectly confident, that it was Friday night, the 23d. I passed him on the walk, as I was passing out of the dissecting-room entry.

Cross-examined by Mr. Sohier. — The shed is on the opposite side of the building from the dissecting-room. I don't know whether I touched him, or not. I spoke to him, but Dr. Webster only bowed. I was to meet two young men on Hanover street, that evening; medical students. I had met them on Thursday night. I expected to be detained on Saturday night, and agreed to meet them on Friday night.

It was a remarkable circumstance to meet Dr. Webster there, that night: so remarkable, that I laid it up in my recollection. I think, that I first mentioned this, to Mr. Richardson, a member of the bar. It was not far from Thanksgiving-night, that I mentioned it. Whether it was before, or after, I do n't know. I fix the hour, as we usually had tea at half-past six, P. M., and I was to meet the young men at seven o'clock. I came from the dissecting-room; left some students there. I do n't know how many.

To Mr. Bemis. — The reason why I thought the circumstance a remarkable one, was, that I had never seen the Doctor there, at so late an hour, before, after he had lectured. His usual habit was to go away, lecture-days, immediately after he had lectured. This was my second, and last course of lectures.

WILLIAM CALHOUN, *sworn, — examined by Mr. Bemis.* I drive a team for Mr. Fuller, the iron-founder; live on the corner of Fruit street.

About the time of Dr. Parkman's disappearance, I recollect seeing Dr. Webster, one Sunday night, the first Sunday after the disappearance. I saw him in front of the College, in North Grove street. I was with Mr. Littlefield, talking with him. Dr. Webster was about twenty paces off, coming down Fruit street, towards us. I had no watch, but I should think that it was about four o'clock. It was pretty clear and light. Dr. Webster came up to Mr. Littlefield, and said, "Did you see anything of Dr. Parkman, the latter part of last week?" "Yes," says Mr. Littlefield, "I did." "Whereabouts did you see him?" "About the ground, where we now stand," he replied. "Which way was the Doctor coming?" Littlefield answered, "He was coming towards

the College." "Where was you, when you saw him?" Mr. Littlefield said, "Somewhere about the front entry, or front door of the College." He also asked, "Did you see him enter the College?" Mr. Littlefield said, "No; as I went and sat down in one of the rooms." — I am not acquainted with the College, and can't say, what room. He also asked, "What time it was when he saw Dr. Parkman?" Mr. Littlefield answered, "It was about half-past one o'clock." The Doctor said, that he paid him $483, on his lecture-room table; that Dr. Parkman never stopped to count the money, but grabbed it up, or wrapped it up, and ran away, or went off as fast as he could, — or something like that; and that he told Dr. Parkman, that he must go to Cambridge, and see if the mortgage was discharged, and everything done up in good shape: and that was the last he saw of him.

He, (Webster,) did not say, whether Dr. Parkman made any answer, or not: he said, that it was the last that he ever saw Dr. Parkman, and this I recollect well. I can't speak about the Doctor's looks or manner; for I was not acquainted with the gentleman, or had spoken to him before. He had a cane, because I saw him put it down on the ground, several times; that is, let it drop. While Dr. Webster was talking, he had his face to the College. Mr. Littlefield was sidewise; Dr. Webster and I fronted the College. I did not pay particular attention, as I never thought of giving evidence about it. I recollect the conversation, however, very well.

Cross-examination waived.

Dr. John B. S. Jackson, *sworn, — examined by Mr. Bemis.* I am one of the Professors at the Medical College; am Professor of Pathological Anatomy. I have known Mr. Littlefield, since I was a Professor, perhaps longer; it may be seven years.

About one o'clock, of the day of Dr. Webster's arrest, Mr. Littlefield applied to me, for some purpose. It was at the Medical College. He came to my room, and began to speak about Dr. Parkman. He did not make any direct application to me, to do anything, or for leave to do anything. He informed me, that he had already commenced, and partially dug through the wall. I advised him to go on and finish the opening through the wall. I cannot repeat the very terms in which I gave the advice. I told him, that if he made any discovery, to go at once and inform Dr. Bigelow, Senior, of the fact, and to call at my rooms, in the neighborhood, and to leave his name upon my slate, if I was not in. I enjoined

strict secresy on him, in case he made no discovery, and pledged myself to the same. When I came home, in the early part of the evening, I found his name upon my slate.

I do n't know that any considerable portions of anatomical subjects have ever been used in the chemical room, and, probably, should have not known it, if they had been.

Cross-examination waived.

GEORGE W. TRENHOLM, *sworn, — examined by Mr. Bemis.* I am a police-officer. Last November, my beat was in the district near the Medical College. I knew Mr. Littlefield, the janitor; had known him for two or three years. I also knew Professor Webster.

The first time that I saw Professor Webster, after Dr. Parkman's disappearance, was on Sunday afternoon, the 25th. I do n't recollect the hour of the day. I was standing in front of the Medical College, in North Grove street, talking with Mr. James H. Blake. Dr. Webster came from towards the front steps, towards us. I do n't know whether he came out of the College, or not. He spoke to Mr. Blake. His first remark, I think, was, that he had read of Dr. Parkman's disappearance, in the newspaper, the evening before. He said, that he thought he would come in and let his friends know, that about that time he paid him $483, and some odd cents; that Dr. Parkman took the money up, and started out of the room without counting it; and told him, that he would go to Cambridge, and discharge the mortgage. I left Dr. Webster and Mr. Blake there, together.

I did not see Dr. Webster, again, till Friday, the day of the arrest. On that day, I was passing by the College, at about half-past three to four o'clock, and met Mr. Littlefield. He told me that he had commenced digging through the wall, and, of his suspicions of Dr. Webster. He said that he had told the officers, that every place in the College had been searched, except the Doctor's private privy; and that he was now going to dig through the wall, to satisfy himself and the public, and see if there was anything there. He took me into the dissecting-room entry, and told me, that the wall had been very hot the day before; so hot, that he could not bear his hand on it. I put my hand, by his direction, upon the wall, but could not then feel any heat. We then went round to the front of the building; and, while we stood talking, Dr. Webster came up, and said to me, "What, about that twenty-dollar bill?" I told him, that I had not heard anything about it. He then said, that an Irishman came to the Cambridge

bridge, and offered a twenty-dollar bill, to pay one cent toll. The toll-man thought that it was strange, that an Irishman should have a twenty-dollar bill, and he asked him, where he got it; and he said, "From Dr. Webster." Dr. Webster said, that the Marshal had the bill, and had sent for him, to identify it; but, said he, "I told him that I could not swear to it." The Doctor then went off, bidding me good-night. Mr. Littlefield told me to come back in twenty minutes, and he would then be through the wall.

I was gone about twenty minutes; came back, and asked Mrs. Littlefield, If her husband had come up from under the building? She said, that he had, and had gone to Dr. Bigelow's. I asked, If he had found any thing? and she said, he had. She asked, If I was afraid to go down, if she gave me a light? and I said, No. She showed me the way to the trap-door. I went down with a light, and crawled out to where he had been digging, put the lamp through, and my head as far as my shoulders, and looking in, saw the parts of a body, afterwards shown to Professor Webster. I then came up, and waited, till Mr. Littlefield returned with the Marshal, Dr. Henry J. Bigelow, and Mr. Clapp.

I assisted in taking out the remains. We all went down, to get them. Mr. Littlefield, and I, crawled through the hole. I held the lamp, and Mr. Littlefield passed the remains out. They were only passed through the wall, and then laid upon some boards, close under the building. I do n't recollect, whether we went into the laboratory, before Dr. Webster came. The Marshal left me alone, in charge of the building, and I stayed there.

It was nearly eleven o'clock, when Professor Webster, and his party, arrived. I was not at the front door, when they came. Mr. Littlefield came, and told me, that the party had returned, and he and I went up through the laboratory, and forced the door, between the back room, and the lecture-room, so that the party could get in. Some one asked for the key of the privy-door; and Mr. Littlefield made answer, That the Doctor had the key, as he always kept it himself. The Doctor then pointed to a hook, or a nail, and said, that "It was up there." I think Mr. Starkweather took the key down, and handed it to Mr. Littlefield. He and I went down to the laboratory, and the key would not unlock the privy-door. I then tried the key, and told Mr. Littlefield, that it was not the key. We went up stairs, again, and Mr. Littlefield told Professor Webster, that, that was not the key. I don't re-

collect what Professor Webster replied. The door was then broken open.

Up in the back room, I did not take so much notice of Doctor Webster, as down in the laboratory. He appeared differently, in the two rooms; more agitated in the laboratory. He snapped at the water given to him. I remember the inquiry being made about the bones in the furnace, but by whom, I do n't know; it was while the Doctor was in the room.

Mr. Adams, Mr. Rice, and myself, remained in charge of the College, all that night. I remained there, Saturday, and until Sunday; and only left for a few moments. The remains were put into a box, in the privy, and nailed up, Friday night. I heard no particular instructions given, by the Marshal, as to observing Mr. Littlefield's movements; but the place was securely, and properly guarded, by the officers, and myself.

I recollect an inquiry being made, when the party were in the upper room, about a hatchet; and Dr. Webster said, that it was in the sink in the laboratory, below. I think, that Mr. Littlefield found it in the place named. I was present, when Mr. Clapp fitted a key into the lock of the privy-door, either Saturday, or Sunday morning. The lock laid on the floor, having been pryed off, when the door was forced.

Cross-examined, by Mr. Sohier.—I had not heard anything, about the twenty-dollar bill, till Dr. Webster spoke of it. I was slightly acquainted with Dr. Webster, he having employed me, on some police-errands, a week, or two, before this. I was present at a conversation, on Saturday, November 24th, between Mr. Kingsley and Mr. Littlefield, when the latter told the former, that he had n't seen Dr. Webster, for three, or four days. This was about four o'clock, in the afternoon. Subsequently, in the afternoon, Mr. Littlefield went up to the Marshal's office to correct — [Witness's further statement on this point, arrested, as matter of hearsay.] I I do n't think, that he stated, to Mr. Kingsley, where he last saw Dr. Parkman.

Mr. Littlefield told me, of his suspicions of Dr. Webster, on Friday. He told me, that he wished me not to say anything about his digging through the wall. I don't know, who made the inquiry about the hatchet: it was wanted, for the purpose of breaking open the back private room. Dr. Webster said it was in the sink, on the floor of the laboratory. The inquiry for the privy-key, was after this. It was stated in

the Doctor's presence, that the key pointed out by him, would not fit. I was present, when the privy-door was forced, but did not assist. It was done, by officer Adams, I think. The lock came off, and the door was subsequently kept shut, that night, by driving a nail through it, into the door-post.

NATHANIEL D. SAWIN, *sworn, — examined by Mr. Bemis.* I am an express-man; run the "Cambridge, and Boston Express."

I know Professor Webster; have been in the habit of bringing in, and carrying out, articles for him. I recollect the week of Dr. Parkman's disappearance. I recollect of bringing in articles for him, to his laboratory, that week. I was there, on Monday, November 26th, and brought in two bundles, of what I call, fagots, or cuttings of grape-vines. I took them at Professor Webster's house. I brought in, also, an empty box, and a bag of tan. The box was about a foot and a half square, like a soap-box. I took the bag, and box, from Dr. Webster's house in Cambridge, and left them in Mr. Littlefield's cellar. I received directions, from Dr. Webster, to leave them there; and he said, "I will take them into my laboratory, myself." I had never received any similar instructions, before. I have been in the business, three years, next August; and suppose, that I have been to the College for him, during that time, two hundred times, at least. I had always been accustomed to leave articles in the lower laboratory, or else, in the upper. If I found the doors locked, I would take the keys in Mr. Littlefield's kitchen, from a small case, at the left hand of the door, as one goes out of the entry into the kitchen, and open them, myself.

The Monday when I left the articles, I looked for the keys, and tried to open the door. I took hold of the laboratory-stairs door, to set the articles in, but found it fast. I then set them down by that door, in Mr. Littlefield's cellar, and went through the entry to the store-room door, and found that fast, like the other one. I then looked for the keys, and could not find them. I usually went in by the store-room door.

I went again to the Medical College, for Dr. Webster, on the 28th of November, Wednesday, and carried two boxes. The largest was about two and a half feet long, one foot deep, and ten inches wide; the other, was about one and a half feet square. The small box was full, and the other empty. I left them in Littlefield's cellar, where I left those on Monday. A piece of the cover of the small box was broken

off, one end, and I observed a piece of a small check handkerchief. I did not try the door. I saw the other things there, —the grape-vines and the box,—though not the bag of tan. If it had been there, I think that I should have seen it.

I went to the College, after the arrest of Professor Webster. I could not find but one box, which I could identify, and that was the small one, which I took in, on Wednesday; the box which had the check handkerchief. It was marked with red chalk, "J. W. Webster, Cambridge." I saw the grape-vines, but not the other things. The other boxes were made of pine.

Cross-examined by Mr. Sohier.—I carry boxes very frequently to the College. I never saw any tan, in barrels, in the lower laboratory. Dr. Webster did not say, that the door was locked, when he told me to leave the things in the cellar, on Monday.

I have seen this clasp-knife, or jack-knife, before; [that found in the tea-chest, was here exhibited to him by Mr. Sohier;] I saw it on the 17th of November last, in Dr. Webster's hands, in his garden, at Cambridge. He was trimming his grape-vines, and was standing on some steps. He came down the steps, with this in his hand, to speak to me. He had cut his finger a little, so that it bled; and this led me to make a remark about it, and the knife. I noticed it as a very peculiar knife, and am positive that this is the same.

Derastus Clapp, *sworn,—examined by Mr. Bemis.* I am a police-officer; and have been such, since 1828.

[Two promissory notes, an account, and three memoranda were exhibited to the witness, and identified by him, as having once been in his possession, and now bearing his initials. He was then asked, How, and under what circumstances, he came to have any knowledge of them?]

On the 5th of December, I was directed, by the City Marshal, to go to Cambridge, and get a Cambridge officer, and search the house of Dr. Webster. I took officer Hopkins, of Boston, with me, and procured the aid of officer Sanderson, of Cambridge, and went to Cambridge. We went to the house of Dr. Webster; the others went up-stairs, while I remained down. This was the second search which was made there. I went to search for a particular parcel of papers in Dr. Webster's house, in consequence of directions which were given me, before leaving Boston. I asked Mrs. Webster, If she had in her possession, any particular parcel or package given her, by the defendant at the bar? Shortly after asking

this question, she left the room, in company with Mr. Sanderson, and presently returned, bringing a bundle of papers. The papers, (the three first of those shown to me,) not being articles named in the search-warrant, I requested Mr. Sanderson to replace in the trunk, up stairs, where he had found them, and to bring the trunk down. The trunk was brought down; and I requested Mrs. Webster to hand them to me, as I wished to take them to the city, and would give her a receipt for them; which I did.

I believe the officers went up stairs again; but this was all that we found, or took away. The Cambridge officer had a search-warrant. I did not know what the package contained, which I asked for, but I supposed that that handed me by Mrs. Webster, was the one. I recognized the handwriting of Dr. Parkman on two of the papers, and put my initials on all of them, for the purpose of identification.

[The notes, bearing the witness's initials, were here produced, and put into the case; the defendant's signature to them being admitted by his counsel, and Mr. Bemis stating, that the Government would prove, hereafter, that certain memoranda upon them in pencil, or in ink, which were not admitted to be his, were also actually made by him. The following are copies of the notes:]

$400. *Boston, June 22d*, 1842.

For value received, I promise to pay to George Parkman, or order, the sum of four hundred dollars in fifteen months from this date, with interest, to be paid at the rate of six per centum per annum. J. W. Webster.

[On the bottom of the note, in pencil-marks, admitted to be the handwriting of Dr. Parkman, was the memorandum:]

This is to be given up, on pay't of W.'s note, of Jan'y 22d, '47.

[And on the back of the note were two indorsements, in ink, also admitted to be by Dr. Parkman, of—]

1845, *July 10th. In't is act'd to date, by rec't, and seven dolls. of principal, leaving due* $393.

Oct. 10. *Seventy-five dolls.*

[In another place, on the back of the same note, was an indorsement in pencil, which, Mr. Bemis stated, would be shown to be in the defendant's handwriting, as follows:]

$483.64, *bal. p'd. Nov.* 22, '49.

[Across the face of the note were two heavy transverse dashes, each about two inches and a half long, and from an eighth, to a quarter of an inch, in breadth. One of these terminated in a collection of hair, or fibrous marks, as if made by an instrument capable of making a number of such marks, simultaneously. There was also a single heavy transverse dash across the signature, "J. W. Webster." It was stated, that it would be hereafter proved, that these dashes, and similar ones on the other note, were not made by a pen, as had been represented by the prisoner.]

[The second note was, as follows:]

Boston, Jan'y 22d, 1847. Value rec'd, I promise to pay to Geo. Parkman, or order, twenty-four hundred and thirty-two dollars, within four years from date, with interest yearly: a quarter of said capital sum being to be paid yearly.

$2432. J. W. WEBSTER.

Witness, Chas. Cunningham.

[Underneath the body of the note, (and on its face,) were two memoranda, both admitted to be in Dr. Parkman's handwriting. The first, in pencil, as follows:]

500 *of the above, is G. P.'s.* + 332 = 832. *Bal. due Mr. Chas. C.*

[The second memorandum, (in ink,) with the exception of the words and figures after "*cancelled*," was as follows:]

On pay't to G. Parkman, of eight hundred and thirty-two dollars of this note, and in't, Dr. W.'s other mortgage & note to G. P., of June 22d, 1842, *is to be cancelled. (Copy W. has*, $831 83½, *corrected.)*

[Across the face of this note, were two heavy dashes, similar to those upon the face of the other note, though still wider. The signature was also dashed out, with a similar heavy dash. The word "*paid*" was also written twice, transversely, across the face of the note, in ink. The counsel for the defence declining to admit that these latter words were in the prisoner's hand-writing, it was stated, that they would be shown to be so, hereafter, by the Government's proof. On the back of the note, indorsed in pencil, (in what was admitted to be Dr. Parkman's handwriting,) was the memorandum]—

7, *Nov. 3d*, $17.56, *as by rec't.*

[Also in ink, and in Dr. Parkman's handwriting, the further memoranda:]

1848, *Apl.* 18*th. Rec'd a hundred and eighty-seven dollars* 50-100, *by Chas. Cunningham, and gave rec't. G. P.*
Nov. 11*th. A hundred and eighty-seven dolls.* 50-100, *by C. C., and gave rec't.*

[The account was next put into the case. It was on a half-sheet of letter-paper, and appeared to have been originally folded in the shape of a letter, with the superscription on the back, (in what was admitted to be, Mr. Charles Cunningham's hand-writing,) — "Professor J. W. Webster, Cambridge, Mass." The body of the account was also admitted to be in Mr. Cunningham's hand-writing; but, in regard to the memorandum at the bottom, beginning, "*Bal due,*" &c., in pencil, the prisoner's counsel declining to make any admission, it was stated by Mr. Bemis, that the hand-writing would be proved to be the prisoner's. The account is as follows] —

Mem. — The amount of the note given, was			$2,432	00
To cover the following sums loaned,	$1,600	00		
Due Dr. P., which agrees with your acc't,	348	83		
" Mrs. Prescott,	200	00		
" A. & C. C.,	234	00		
And for am't of bills which exceed the $1,600, but allowed by several individuals on settlement,	49	62	2,432	45
Consequently, the $348 83, is included in both your notes; and Dr. P. took his security in the note for $2,432, and mortgages for that sum, because he did not consider the security he had, sufficient for the $348 83, and declines surrendering the note, until his debt is paid; he says, however, you hold a document from him, dated Jan. 22d, 1847, stating, that the amount of $2,432 covers both debts to him. — The note for $2,432 is in his favor, and is held by him. Your debt to him appears to be the old balance of			$348	83
Loaned you of the $1,600,	$500	00		
Deduct paid him,	375	00	125	00
			$473	83
He says you paid him, Nov. 3d, '47, and have a receipt for, without interest,			17	56
			$456	27

Of the loan of $1,600, Feb., 1847, you owed Dr. P. as above,		$125 00
Mr Prescott advanced,	$500 00	
Paid him,	187 50	
		312 50
Mrs. P. advanced,	200 00	
Paid her,	75 00	
		125 00
Mr. Nye advanced,	200 00	
Paid him,	150 00	
		50 00
C. C. advanced,	100 00	
Paid him,	75 00	
		25 00
		$637 50

I have seen Dr. P. this evening, as requested by you, and trust the above contains all the information you wish.

Boston, April 25th, 1849. Yours, &c. C. C.

Dr Webster.

[In Pencil.]

Bal. due Dr. P.,	$456 27
	27 37 *int.*
$483 64	$483 64

[On the back of the account was the following superscription, which, it was also stated by Mr. Bemis, would be shown to be in the defendant's hand-writing.]

C. Cunningham, on debt to Parkman. Ap. 25, 1849. *Bal. due Dr. P.* $456 27.

Mr. Clapp, resumes. — The three memoranda shown to me, came from the prisoner's wallet, when I searched him at the Leverett-street jail, the night of his arrest, Nov. 30th. [The memoranda were here put in: it being stated, as before, by Mr. Bemis, that the hand-writing of the two smaller ones would be hereafter shown to be the defendant's. The larger one was conceded to be in Dr. Webster's hand-writing. The first, and largest memorandum was written in ink, on two consecutive pages of letter-paper, in juxtaposition, or as if in duplicate, of a size of about five inches in length, by three in breadth: and the two others, on two scraps of

letter-paper, each about three inches long, and an inch and a half broad. The first read as follows :] —

Nov 9. Friday. rec'd
$510,00
234,10, out Dr. Big.

Pettee Cash — $275,90

Dr P. came to lecture-room, front left hand seat, — students stopped — he waited till gone, and came to me and asked for money — Desired him to wait till Friday 23d, as all the tickets were not paid for, but no doubt wd be then — he, good deal excited — went away — said I owed him $483,64.

Friday 23d, called at his house about 9 A. M; told him I had the money, and if he wd call soon after one, wd pay him — He called at ½ past, and I paid him, $483,64 cts.

9th Due Dr P, who called at lecture $483,64, by his act. — Desired him to wait until Friday 23d — Angry.

Friday, ½ 1, pd him; he to clear mortgage.

Note, Feb 13, 1847, including smaller one, $2432. (The) $125 due him on loan, which the large note covers, he agreed to give up tow'd's sale of Min'ls.

Bal due, 483, 64. — paid, and he gave up two notes — had not the mortgage, but said he wd go and cancel it. Had pd him 375 by Smith
125 due
500 the loan.
Rest from other persons.

[On the back of this memorandum, in what was also admitted to be the prisoner's hand-writing, in ink :]

Mortgage, 22*d June* 1842.
Note, $400, *June* 22 '42.
Note, $2432, *Jany* 22 '47.

[The second memorandum, in ink, consisted of the following words : — *ale* [or axe] — *jug mol's* [molasses?] *keys* — *Tin box* — *Paint* — *Solder*

[The third memorandum, in pencil, consisted simply of the figures :] —

483,64.

Mr. Clapp, resumes. — We received various reports through the Marshal, that Dr. Parkman had been seen, in various parts of the city, on Saturday, Sunday, Monday, and Tuesday. On Tuesday, I was directed to take certain officers to look over the College, all vacant houses in the neighborhood, and the lands about the jail. I took Mr. Fuller, and Mr. Rice, and went to the College, on Tuesday, November 27th, where we arrived, some time after eleven o'clock. We entered the east front, through Mr. Littlefield's apartments; found him there, and went in his company, to Dr. Webster's apartments. We tried a door, and found it fastened; — a door to get into the laboratory. We then went up the front entry to the door of Professor Webster's lecture-room.

Mr. Littlefield informed us, that it was the Doctor's lecture-

day; and that it would be but a short time, before the lecture would begin. Perhaps it was half-past eleven o'clock, then. Mr. Littlefield rapped, but no one came; he rapped again, and, in about half a minute, Dr. Webster came to the door. I informed him, that we wished to look over the College. He said, that the police had made a search, before, but if we wished to do so, we could.

Seeing Dr. Webster, whom I had known by sight, for a quarter of a century, (though I did not know, that he was a Professor,) I said to him, "We ca n't believe, for a moment, Sir, that it is necessary to search your apartments." (At that time, those persons had not discovered their mistake, who reported, that they had seen Dr. Parkman, in the city.)

To the Chief Justice. —I told him, that we were about to search all the houses in the neighborhood, and we thought that we would begin with the College; or some people might get their backs up, about it.

Mr. Clapp, resumes. — He asked us to walk in; and we went down the steps to his table. I there inquired of him, When he had seen Dr. Parkman? He said, That he saw him *there*, last, on Friday, the 23d; that he came, there, by appointment. He also said, on an inquiry from me, — "How much he paid him, that day?" — That he paid him $483: — and I do n't remember, whether any odd cents. He said, that he took the money, and went up the steps, in a hurried manner, and went out of the door, by the way he had come in; and that he had not seen him, since.

He led us into his back room, and pointed out his closets, and also opened the little back room, and said that, that was where he kept his valuable, and dangerous articles. We merely looked into the room; did not search: — the whole was a mere passing movement through the premises; — and then went down to the lower laboratory. We passed round his tables, and apparatus, which were in confusion, but saw nothing to attract attention. We were shown to the passage-way, to the dissecting-room entry, by the Doctor, himself. We went to the stairs, and the door where the privy is, and then turned, and went back, again. Some one called my attention, and I returned, and looked to the door, leading out to the dissecting-room entry.

I do n't know who it was, that called my attention. I do not recollect of looking into the privy-window. I did not expect to find anything at the College, at all; and had n't the most distant idea, that there was anything wrong about the Professor's apartments. I made the excuse for looking

at the College, which I stated above; can't say, by which door we went out.

We searched the great vault. I held the light down, myself; could see well around. We searched every inch of Mr. Littlefield's apartments, I believe; drawers, clothing, pockets, male and female clothing, crockery-ware; also searched the attics. I did not go down the scuttle, or trap-door; though I saw some of my party go down.

Friday night, the 30th of November, I was called to the College, about six o'clock; found Mr. Littlefield, Dr. Bigelow, the Marshal, and Mr. Trenholm, there. We went to the scuttle, under the front entry, and went down underneath. After we got down under the building, I was the first to put the light into the hole, where the remains were found. After we took the body out, we came up, and went into the laboratory; the door was open on the lower floor. Mr. Trenholm, the Marshal, Mr. Littlefield, and myself, were there. I went in, first, I believe. I found a pan of sand, on the right side of the furnace, where the bones were found; saw the furnace, which was covered over with a soap-stone cover, and minerals. I put my hand into the furnace, and took out a piece of coal, and found a piece of burnt bone, adhering to it. The Marshal said, Do n't trouble anything, there.

I was sent by the Marshal, to Cambridge; I took a coach, and, in company with officers Starkweather, and Spurr, went out there. We stopped the coach, a few rods from Dr. Webster's house. I went ahead; and, as I got to the gate, I met the Doctor on the front steps, showing a gentleman out of his house. The gate was open; I passed in. I spoke to the Doctor, before he got into his house, and told him, that we were about to search the College, again, that evening, and wished him to be present. He went into his library, and put on his boots, coat, and hat. We were not in the house, two minutes. As we passed out, the Doctor said, "I should like to go back for my keys." I told him, that it was not necessary, as we had keys enough to unlock the College. He said, "Very well," and we got into the coach.

I do n't recollect, that Dr. Webster said anything, as we walked to the carriage. I told the driver to go over Cragie's Bridge, through East Cambridge. I tried to have a free conversation, and a part of the time, we conversed about the contemplated railroad to Cambridge. We also talked, of the efforts which had been used to find the body of Dr. Parkman. I told him, what distances we had sent; and the stories that had been told, as to his being seen. He said, "There is a

lady over there," (pointing towards the Port,) "a Mrs. Bent, who knows something about it. — Suppose, we ride over there." I told him, that we had better postpone it, to some other time. Dr. Webster said, — (I do n't recollect, what led to it,) — that he had called at Dr. Parkman's house, about nine o'clock, on the morning of the 23d, requesting the Doctor to call at the College, betwixt one, and two, P. M. He also stated, that the Doctor did call; that he paid him $483; and that Dr. Parkman was to cancel a mortgage. I inquired of Professor Webster, if Dr. Parkman had done so. I think his answer was, that he did not know. I then asked him, if, in case it had not been done, and Dr. Parkman was not found, he would be the loser. I think his answer was, that he presumed, not.

When we arrived near the bridge, the tide was down. I pointed it out to Professor Webster, and told him, that soundings had been had in all those waters, above, and below, the bridge. I told him, that a hat had been found, at the Navy Yard, which was supposed to be Dr. Parkman's. I do not recollect, that he made any comment, or reply. When we got to Brighton street, the Doctor said, that we were going the wrong way. I replied, that the driver might be green, but he would probably find his way, to the College, in time.

We arrived opposite the jail-door, at about eight and a half o'clock. I got out on the off-side, to see if there were any spectators in the jail. There were none; and I came out, and opened the door, on the near side, and said, "Gentlemen, I wish you would get out, and come into the jail-office, a few moments." I did not hear a remark made by any individual. We then all got out, and went into the jail-office. After we had all got into the outer office, I took the lamp, and said, "Gentlemen, suppose we walk into the inner office." I do n't recollect a word being said, until we had got in there.

The first one that spoke, was Dr. Webster. He turned half round to me, and said, "What does this mean?" or, "What does all this mean?" Said I, "Dr. Webster, you recollect that I called your attention, at the bridge, to soundings having been had, above, and below, the bridge. We have been sounding in, and about the College, and have done looking for the body of Dr. Parkman. We shall not look for his body, any more; and you are now in custody, on a charge of the murder of Dr. Parkman." He articulated half a sentence; I could not understand, exactly, what it was, and then said, "I wish you would send word to my family." I

recommended to him, to have it postponed, until the morning. I told him, that it would be a sad night spared to them. He seemed inclined to talk to me, about the crime which was charged to him, and I said to him, "Doctor, I think that you had better not talk to me on the subject."

He wished me to notify some of his friends in the city. I told him, that it would not be necessary to do it, that night, as he could not see them, if they came, and that he had better let it remain, until morning.

I told him that I wished to see, if he had any articles about him, improper to carry into the jail. I took from him, or he handed to me, a gold watch, a wallet, (containing the three memoranda, before produced,) $2 40 in money, an omnibus-ticket case, and five keys. [Witness produces the keys; one of which, an iron key, four or five inches long, and somewhat rusty, had a paste-board label on it, marked, "Privy."] The privy-key had the label on it, as at present.

I took all these articles, and tied them up in a handkerchief, and afterwards carried them to the Marshal's office. There, I locked them up in my private drawer, of which I had the only key, and did not see them again, until Sunday, about twelve o'clock.

I left Dr. Webster in the custody of Mr. Starkweather and Mr. Spurr, in the back office, while I went into the front room to make out a *mittimus*, or commitment. After making out the *mittimus*, I requested them not to commit the Doctor, until they heard from me; and, taking Mr. Spurr with me, told Mr. Starkweather to remain with the Doctor until I returned. Mr. Spurr and I then left, and went to the Marshal's office. After locking up the articles there, I went in pursuit of the Marshal. Jailer Andrews was not at the jail, when we left our prisoner there. We did not find the Marshal, or Mr. S. D. Parker. We then went down to the College, and found Dr. Webster there, in charge of two jail-officers. Mr. Parker and the coroner, and others, were there; there were also several physicians there.

I first saw the party, in the laboratory; they were standing by the sink, from whence the Cochituate water runs. Dr. Webster was already down stairs, and there was great inquiry for the key to the privy. Mr. Littlefield went and got several, but none would fit. I got the poker, somebody got something else, and we pried into the door of the privy, and in so doing, the lock came off.

I did not then know, that I had a key in my possession that would unlock the privy. On Sunday, I found the key

marked "Privy," while looking at the articles which I had taken from Professor Webster. I showed it to the Marshal, went to the College, and found *this* lock, [exhibiting one] on a shelf behind the door. I put the lock on the privy-door, put in a screw, and then applied the key, and found that it fitted.

I have some keys, which I got at Dr. Webster's house, on the second search. [Witness produces them.] They are the keys which fit Dr. Webster's apartments. The two keys which fit the two front doors of the College, the upper and lower, were found in a drawer in his laboratory.

I saw Coroner Pratt in the laboratory, when Dr. Webster was there, after I got back from Cambridge. I think that the attention of the County Attorney was called to the bones in the furnace, at that time. At that time, or soon after I went into the laboratory, I found the Doctor standing, facing the north side of the building, and trembling, as if in a fit. Some one put a tumbler to his mouth, but he did not appear to have power to drink. He did not seem to notice any one, or anything that was said to him. He appeared like a person in a fit of *delirium tremens*, or trembling madness, more than anything else that I can think of.

The first search of the prisoner's house was made on Saturday morning, December 1st. I got Mr. Charles Cunningham to accompany me, as I thought that it would be a disagreeable business, to go alone. We found *this* bank-book in a drawer in the library. [Witness produced a small memorandum-book, apparently used for the purpose of keeping the prisoner's account with the Charles-River Bank.]

Our search, otherwise, did not amount to anything; that is, we did not get what we went for. We searched the library, very closely, behind the books on the shelves, &c. We also searched the trunk, in which the notes and account were afterwards found: but I saw no papers there like them, then. I should have seen them, I think, unless they had been in the folds of some other paper: and they were not so, when we found them afterwards. We searched the Professor's mineralogical cabinet, at the College in Cambridge, and his own house, again, that day; but did not find anything.

It being now two, P. M., the Court adjourned till three and a half o'clock.

Monday, P. M., March 25th.

The Court came in at three and a half o'clock, and the trial proceeded.

DERASTUS CLAPP, — *recalled*, — *cross-examined by Mr. Sohier.* There were other private papers in Dr. Webster's wallet, at the time of his arrest. I think that Mr. Littlefield tried to open the door by the laboratory-stairs, when we tried to get into the Doctor's apartments, on Tuesday, though I do n't distinctly recollect seeing him do so. I heard him say that he had. I looked into the back private room. Things looked tidy and snug there. I saw some minerals in the lower laboratory, but my attention was not particularly called to them. I do not recollect whether there was a fire in the furnace in the lower laboratory, or not. I do n't recollect anything else being said about making a search at the College, the night of the arrest, while we were coming in in the carriage, further than what I have already stated. The keys, which I have produced, were all that I found upon the Doctor, or in searching at his house, and the College. He said, coming in, that Dr. Parkman was an honest man, and that he did not believe he should suffer any loss, if he were never found. The conversation between us was free and easy, as I desired to prevent his suspecting that he was under arrest. It was half-past eight, when I made out the *mittimus*, for I looked at my watch.

CHARLES W. LITTLE, *sworn*, — *examined by Mr. Bemis.* I am a student in the senior class at Harvard University, and reside in Cambridge.

I knew Dr. George Parkman by sight. I recollect meeting him on Thursday, November 22d, between the hours of one, and two, P. M., in Cambridge, in the street leading by the Episcopal church to Mount Auburn; it was between the residence of Mr. William Saunders, and the Washington elm, and about a quarter of a mile, or less, from Dr. Webster's residence. Dr. Parkman was riding in a chaise, and he stopped, and asked me, where Dr. Webster lived. I told him where, and he rode on. I fix the day, from the fact of my going to New York, Friday, the 23d, the next day. Upon my return, on Sunday morning, I heard of his disappearance, and recalled the fact of his meeting me. Dr. Parkman was riding alone.

No cross-examination.

SETH PETTEE, *sworn*, —*examined by Mr. Bemis.* I reside in Dorchester, but do business in Boston; am discount-clerk in the New England Bank, and collect funds for the Faculty of the Medical College.

There are seven professors connected with the Faculty. My duty is, to dispose of the tickets, and receive the money for the same. Each professor has his own tickets, and receives his own funds. I entered on my duties on the 7th of November. This was my first acquaintance with Dr. Webster. I received one hundred of Professor Webster's tickets, to dispose of to the students who wished to attend his lectures.

Previous to, and up to the 23d of November, I had disposed of fifty-five of his tickets; for which I had received pay, in cash, at fifteen dollars a ticket, $825. Of the balance of the hundred tickets, I have sold some for the promissory notes of the students, which they gave in payment, not being able to pay the money; and some were given away, as "third-course," or free, tickets. Those sold for notes, and the free, together, amounted to thirty-eight; and I have seven, on hand.

Out of the promissory notes, taken in payment, Dr. Webster had realized nothing, prior to November 23d; though fifteen dollars had been collected on two half-pay tickets of his. This sum, however, had gone to pay Dr. Bigelow, for a debt due the Faculty. So that, previous to the 23d, the sum of $825, before named, was all that I had collected for Dr. Webster, for his lecture-tickets. I do not know how many more tickets than those which I received, were sold for his course. The whole number of students attending the lectures, was one hundred and seven; and I have only known of three instances of tickets being sold for the Doctor's course, which did not pass through my hands. One was a ticket for a Mr. Ridgeway, which Mr. Littlefield sold, and collected the money for. The other was delivered upon an order of Dr. Holmes's: and there was one other, which, I was told, passed through Mr. Littlefield's hands.

The course of medical lectures began, Nov. 7th. The first payment that I made to Dr. Webster, or division of his part of the joint receipts for tickets, was on the 9th. There was then due him, $510. I paid him in this way. — I deducted out of the $510, the amount of a note due Dr. Bigelow, $234 10, which Dr. Bigelow had given me to collect; and paid over to Dr. Webster, the balance, $275 90, in a check. This check, which I now produce, paid, bears date, November 9th. [Check produced.] The next division was, on, or about, November 14th. I credited Dr. Webster on my account, at that time, with thirteen tickets, amounting to $195, and paid him, by a check for that amount, about the same time. The check was on the Freeman's Bank; and I drew it, and

paid him in the bills of the New England Bank; the teller of the latter bank cashing it for me, for my accommodation. The next division was on November 16th. I credited Professor Webster then, with two tickets, — $30. That amount, I paid him with a check, dated the 16th. I paid it to Mr. Littlefield, on an order from Dr. Webster. The order was not handed to me till the 20th, and bears date that day. [Produced.] I did not see Professor Webster in the meantime. On the 23d, I credited him with $90, the price of six tickets sold. For this, I drew a check for $90, and handed it to him, personally, at the Medical College, on the morning of that day. I have paid him nothing since.

The first time that I ever saw Dr. George Parkman, to know him, was on the 12th day of November last. He came to my place of business, the bank, and inquired of me, whether I collected the funds of the Medical College.

Mr. Bemis. — State any inquiries which he made in regard to Dr. Webster.

Mr. Sohier. — We object to this conversation of the witness's with Dr. Parkman.

Mr Bemis, (addressing the Court.) — We do not ask it as a conversation. We ask it as a fact, to ascertain whether, or not, Dr. Parkman made inquiries about the state of Dr. Webster's funds, in the witness's hands.

Chief Justice. — That is admissible.

Mr. Bemis, (to the witness.) — State whether he ever made such an inquiry.

Witness. — He *did* inquire of me, whether I had any of Dr. Webster's funds in my hands; and, I stated to him, that I had none, at that time.

Mr. Merrick. — We object to any further prosecution of this line of inquiry.

Attorney General. — We wish for the whole of this conversation, with the view of its being shown to have been afterwards communicated to Dr. Webster.

Mr. Bemis. — And, with the further view, to show that it was thereupon mis-quoted by him.

Mr. Merrick. — We do not object to proof of any conversation that was communicated to the defendant.

Mr. Pettee, resumes. — I told Dr. Parkman, at that time, that I had paid over to Dr. Webster all the funds that I had in my hands, a few days before. He made some few remarks, and left the bank. In the course of some fifteen or twenty minutes, he returned, and received a dividend belonging to his wife, which I paid to him. As he was signing a

receipt, I inquired of him, if Dr. Webster owed him; and he said, "I should think that you might judge so, from my manner." He said a few words more, and then left.

A few days after this, Dr. Parkman called on me, again; it was on the same day that I paid Dr. Webster, $195. The check for this amount, is dated the 14th. He asked, as before, if I had any funds belonging to Dr. Webster; and I told him, that I had not, as I had just paid them over. I don't recollect, whether I told him the amount which I had paid, or not. He said, that he thought he had given me a hint, to retain the funds for him; or something of that sort. I told him, that I had no control, whatever, over the professors' funds; that my duty was merely to collect them, and pay them over. He said, that I should have been doing justice to himself, and Dr. Webster, and all concerned, if I had retained the funds for him; and, that, now, he should be obliged to distress Dr. Webster and his family. — I supposed, that he meant, that he should be obliged to commence a suit. He seemed to blame me for not retaining these funds. He then made some remark in relation to Dr. Webster; that he was not an honorable, an honest, or an upright man. — That was the import of it. He repeated it; and added, "And do you tell Professor Webster so, from me." I never saw Dr. Parkman again, after this.

On the morning, of the 23d of November, I went to the College, to pay Professor Webster, the $90, which I had collected. I went about nine o'clock. I inquired for Mr. Littlefield, and they told me, that I should be likely to find him at the front door. I went, accordingly, and found him standing in the front entry. I took a notice, from the notice-box, (a notice to the students, when I would be in attendance, to deliver the tickets,) which I wished to alter, so as to change the day of attendance, from Thursday, to Saturday. I can't state whether the hour was mentioned. Mr. Littlefield gave me the keys to the Library, which I unlocked, and passed through to the private room, in the rear of Professor Ware's lecture-room. I altered the notice, and returned; and then passed down the stairs, through Mr. Littlefield's cellar, by the laboratory-stairs, to Dr. Webster's laboratory. The door was not locked. I passed up into the upper back private room, and found Dr. Webster in.

I excused myself, for coming in at that time in the morning. Dr. Webster made some remark, and told me to walk in. I then stated to him, the reason why I came. I told him that Dr. Parkman had called on me several times, and

inquired, if I had any funds of his, in my possession; and as I did not wish to have any of his funds trusteed in my hands, or any trouble with Dr. Parkman, I had come to pay them over to him. Professor Webster said to me, "Dr. Parkman is a peculiar sort of man; rather nervous; and has been sometimes subject to an aberration of mind; so much so, that he was obliged to, or did, put his business out of his hands; and Mr. Blake, a relative, attended to it, for him." After making these remarks, he said, "You will have no further trouble with Dr. Parkman, for I have settled with him." There was no further conversation, of any consequence, and I went away. I first paid him, however, the $90, in a check on the Freeman's Bank, drawn by myself, as Trustee.

I next went to the College, in the afternoon of the same day, Friday; sometime between four and five o'clock. I went to the front door, (that at the top of the steps,) and found it fastened. I rang the bell, and a woman came through the library, to the door. I supposed that she was going to open the door, but she did not; she inquired, through the side-lights, if I wished to see Mr. Littlefield. I told her, that I did; and she said, if I would go to the east end, under the shed, I should find him. I did go, and met Mr. Littlefield at the door; inquired of him, if he had sent for me. He was dressed as usual, but came in his stocking-feet; without shoes. He said, that he did want to see me, and that he wanted me to fill up a set of tickets for a student, who was going to leave, in the morning. The student's name, was, P. R. Ridgeway. I filled up the tickets, and Mr. Littlefield told me, that he would give me the money for them, on the next day, when I called. I stayed at the College, some fifteen minutes, and then went away.

I called at the College the next day, Saturday, not far from three, P. M. I saw Mr. Littlefield, but cannot tell, precisely when; he was sitting at a table, in Professor Ware's lecture-room.

My visit to Professor Webster, on Friday, was, for the purpose of paying him the money which I held, to get it out of my hands.

So far as I know, he was not informed of my purpose in coming. I had told Mr. Littlefield, the night before, to tell Professor Webster, that I should call at the College, the next morning; but sent no word about paying him money. I don't know whether Mr. Littlefield conveyed my message, or not.

When I had the interview with Dr. Parkman, I can't say

that he used any profane language. When I told him that I had paid over the funds to Dr. Webster, he said, "The de'il you have," or something like that. His language was hard, or harsh; but I do not know, that it was coupled with a profane expression, when he sent the message to Dr. Webster, about his being a dishonorable man. If he had used a profane expression, I think I should have recollected it. When I talked to Dr. Webster, I mentioned to him the fact of Dr. Parkman's making inquiries about his funds; but think that I did not communicate the message, about his being a dishonest, or dishonorable man. I am not sure about it; but recollect thinking at the time that Dr. Parkman said it, that I would not deliver it, but only confine myself to my own reasons for paying over the money.

Cross-examined by Mr. Sohier. — I have no means of knowing how many tickets Dr. Webster, himself, sold. I have no record of any others, than those that I sold myself, and those were ninety-seven.

To the Chief Justice. — The whole number of students, was one hundred and seven — i. e., who took any of the professors' tickets.

Mr. Pettee, resumes. — I presume that the bills paid out by the teller of the New England Bank, were New England Bank bills; he pays out no others. I had no other business with Dr. Webster, on Friday morning, except in relation to the tickets. Dr. Parkman appeared to be harsh in his expressions, and to be very much excited. I am not positive; whether I told Professor Webster, his message, or not. I rather think, not.

Direct, again. — I don't think that I communicated to Dr. Webster, any such message, from Dr. Parkman, as that "he was a d—d rascal, or a d—d whelp." If I had carried such language, from one gentleman to another, I think that I should have recollected it.

JOHN B. DANA, *sworn, — examined by Mr. Bemis.* I am Cashier of the Charles River Bank, at Cambridge.

I know the defendant; have known him twenty years. He has kept a bank-account at our bank; kept one, in November last. [The memorandum-book produced by Mr. Clapp, was here shown to the witness.] The book shown me, was the one furnished him by the bank, for the purpose of containing the current statement of his account.

Dr. Webster deposited, on November 10th, $275 90, in a check on the Freeman's Bank: — November 15th, $150, in

bills: — November 24th, $90, in a check on the Freeman's Bank.

On the 23d of November, there was a balance due Dr. Webster, of $139 16. This balance was struck, upon the checks which had been paid, prior to the 23d of November. On the 1st of November, the balance due him, was $4 26. He deposited no more till the 10th, when he made the deposit of $275 90. He then began to draw; and up to the 22d, the amount of his drafts was $291. On the 1st of December, he drew a check for $93 75, which was paid to Mr. White. The next check was for $5, on the 3d; the next check, the same day, for $10; the next check, for $19, on the same day. At that time, the Doctor's balance was $68 78, when a trustee-process was served. I think there were two or three checks presented, after the trustee-process was served. The balance was paid on the 21st of December, on a check of Dr. Webster, in favor of the party who had trusteed; Mr. Richardson, a coal-dealer.

No Cross-examination.

Daniel Henchman, *sworn, — examined by Mr. Bemis.* I am a druggist, in Cambridge street, in this city; know the defendant.

Dr. Webster asked me, on the 23d of November, if I could give him bills for a check for ten dollars. I consented to, and gave him one or more bills for his check, on the Charles River Bank. *This* is the check. [Produced, bearing date, November 22d.] He gave it to me, ready drawn. It was on Friday, about ten o'clock. I sent the check out, on Saturday, December 1st, and it was not paid, for want of funds.

Cross-examined by Mr. Sohier. — Dr. Holden took the check out for me, and said, that he presented it for payment. I do not know, of my own knowledge, that it was presented on Saturday, or that he was told, that there were no funds.

James H. Blake, *sworn, — examined by Mr. Bemis.* I am nephew of the late Dr. George Parkman; took part in the search, which was made for him after his disappearance.

On Sunday afternoon, November 25th, about three o'clock, as near as I can recollect, I went over to the jail-lands, and from thence to North Grove street, towards the College. When near the College, and while talking with a police-officer, Dr. Webster came up towards me, from the direction of the College, and took me by the hand. I think that he

had no overcoat on. It was rather an unpleasant day, and had been raining, with a cold easterly wind. He took me by the hand, and said, that he had seen in the Transcript, of the evening previous, that Dr. Parkman was missing. He said, that he had come in, on purpose to notify the family, that he was the gentleman who went to Dr. Parkman's house on Friday morning, and made the arrangement to meet Dr. Parkman at the College, at half-past one, that day. That was the first time, that the family knew who it was.

He said, that Dr. Parkman met him at the hour appointed; that he paid him the amount of a note, $483, or some such amount: — (I do n't exactly remember whether there were any cents mentioned:) — he said, that he kept the note; that Dr. Parkman left, and said, that he would go to East Cambridge and discharge the mortgage. Dr. Webster added, "We all know Dr. Parkman to be an honest man, and I trusted him with it." These were his very words. I inferred from them, that Dr. Parkman had the mortgage-deed with him.

He then said, that he should go up and see the Rev. Dr. Francis Parkman. Dr. Webster said, that he had been to church in the morning, and that he thought that he would wait until after dinner, before he came into town. After the conversation, he went into the College.

I came up North Grove street, from the jail-lands, in company with a number of the police. I presume that the Doctor came out of the College: he came from that direction, at any rate. I did not see him afterwards. I did not stay about the College any considerable time. It must have been between half-past two and three o'clock: it was not after three o'clock.

The Doctor might have come up Grove street, while I was standing there, and I might not have seen him: but he seemed to come from the direction of the front steps. [Witness pointed out to the jury, upon a plan of the grounds, the spot upon which he stood.] We had not been there more than two or three minutes, when Dr. Webster came up. He might have seen us coming up North Grove street, or not until we stopped. Dr. Webster took me by the hand, rather suddenly, and, during the whole of the conversation, he held me by the hand. I never knew him to do it before, but I have not had much intercourse with him. He did not say anything about the search for Dr. Parkman. He was rather earnest in his manner. Dr. Webster said, "I kept the note, and I trusted him with it, to go over to Lechmere Point and discharge the mortgage."

Cross-examined by Mr. Sohier. — Dr. Webster said, that he came in, purposely, to inform the family of Dr. Parkman, about the unknown man. He did not tell me, how he came in. I do n't think that I mentioned to him, that I was engaged in searching, then. I commenced the search, on Saturday afternoon, after dinner.

Francis Parkman, *sworn, — examined by Mr. Clifford.* I am a brother of the late Dr. George Parkman.

I have known Dr. Webster a great many years. While a resident at the North End, I was his pastor for several years. After he removed to Cambridge, I knew him, as all gentlemen did, who are acquainted with the College. After he went to Cambridge, I was called to perform certain pastoral offices in his house; within two months of my brother's disappearance. I was called to baptize his grandchild, the last Thursday in September, I think; — the child of his daughter, and son-in-law, who reside at Fayal.

On the Sunday, after the disappearance of my brother, we were in great perplexity and distress. None of us went to church that day. I passed the morning with my brother's family. About four o'clock in the afternoon, just as people were passing from church, Dr. Webster came to my house, and was let into the parlor. On entering the room, almost without customary salutations, he said, "I come to tell you, that I saw your brother at half-past one o'clock, on Friday, and paid him some money." It was then said, by Mrs. Parkman, or myself, I do n't recollect, which, "Then you are the gentleman who called at George's house, at half-past nine o'clock, on Friday morning, and made the appointment." He answered, that he was; and, that he should have come and told us so before, but that he had not seen the notice of his disappearance, until Saturday evening, and he had waited until now, thinking the family might be at church.

I then said, "Dr. Webster, we are very glad to see you; as it is a relief to us, to know who called at my brother's, on Friday, to make the appointment; we feared that some one, who meant him ill, had called, and had beguiled him over to East Cambridge." Dr. Webster said, "I was the person; and, your brother came to the College at half-past one, P. M., and I paid him $483;" and, (I think he said,) "some odd cents." I asked him, "If he was perfectly certain about the hour?" — to which he answered, "I am quite certain; I

finished my lecture at one o'clock, and I waited twenty or thirty minutes, or so, for your brother." I then asked him, "If he had a bundle of papers in his hand?" as some persons, who saw him at quarter-past one o'clock, said that they saw him with papers in his hands. To this, he replied, "He *had* papers; and he took out one, and dashed his pen through it, *so*," (making a motion with his hand, as if to imitate a sudden and rapid dash.)

He evidently meant to represent the act, as one of suddenness, and violence.

Dr. Webster then went on to say, in relation to the mortgage, "I told Dr. Parkman, that he had n't discharged the mortgage." To which, he replied, "I will see to that; I will see to that." Dr. Webster said, that my brother went out very rapidly, from the room in the College, where the interview took place. I then asked him, if he knew, whether my brother actually went to Cambridge. He said, that he could not tell, but that he intended to go, himself, and ascertain. I followed him to the front door, as he went out; and he repeated the declaration of his intention to go to Cambridge.

I think, I have a distinct recollection of the conversation. I am confident, about the statement, of dashing a pen through one paper, as Dr. Webster raised his hand to indicate the motion made by my brother in the act. Dr. Webster's manner, I could not but observe, was hasty,—nervous. He commenced speaking in a business-manner, immediately upon entering the room. I could not but remark, that there was no expression of surprise at the mysterious disappearance, and no expression of sympathy with our distress. I should describe it, as a business visit. In regard to the suddenness and quickness of manner, I have observed the same, before. Rapidity of motion has characterized him, and it has been observed by all who knew him. There was a certain flurry of manner, however, that I had not observed before; not so great, though, as to deeply impress me. What particularly struck me, was the absence of that subdued expression, or tone of sympathy, in which it is natural for those approaching persons in affliction, to speak.

I recollect nothing more, than the plain business-errand, that I have detailed. I should be perfectly safe, in saying, that Dr. Webster was not there, more than ten or fifteen minutes. I cannot distinctly answer, whether he wore an overcoat; but my impression, is, that he did not. I stood on the

steps, when he left. My impression, is, that he went down Green street, towards the College: I cannot say precisely, however.

My brother's domestic habits, were most remarkable. He was among the most punctual of mankind, in all his ways. He was almost always at home, seldom, or never, went out of town, and was almost invariably at his regular meals. If likely to be detained from home, unexpectedly, or beyond his appointments, he would take pains to send, and notify his his family of it; even for very short absences.

He has left a wife, a son, and a daughter. His daughter, has been a great invalid, and was one, for whom he was perpetually anxious. His son was in Europe, when he disappeared, but has lately returned. I believe I may say, with confidence, that I never knew my brother to use profane language. When he was moved, (though he was not an irritable man,) he would use strong language; but never, on any occasion, do I recollect of hearing him utter a profane word.

Cross-examined, by Mr. Sohier. — Two gentlemen called at my house, to say, that they saw my brother, at quarter-past one, P. M., on Friday. Their names were, Fessenden, and Holmes.

Dr. Webster did not say, what paper, Dr. Parkman took, and dashed his pen through. I was sorry, that I had not asked him.

I was all the morning at my brother's house; returned after dinner. None of us went to church, that day.

It being now ten minutes to seven o'clock, P. M., the Court adjourned to to-morrow morning.

SEVENTH DAY.— *Tuesday, March 26th.*

The Court came in, at nine o'clock; and the jury, having been called, and answered to their names, the trial proceeded.

Ralph Smith, sworn, — examined by Mr. Bemis. I reside in this city; am engaged in mercantile business. My place of business is in Exchange street.

Professor Webster was owing me a small amount, last fall. I wrote him, to the effect, that I wished to have the account closed; and received the following letter. [Produced, — admitted to be in the prisoner's handwriting.]

Cambridge, Oct. 15th, 1849.

R. SMITH, Esq,

Dear Sir, — I will call, and pay your bill, on receiving the fees from our medical students, the first of November; until when, I will ask your indulgence.

Respecfy yours,

J. W. WEBSTER.

No cross-examination.

SAMUEL B. FULLER, *sworn, — examined by Mr. Bemis.* I am a police-officer; have been such, for nine years. I have seen Professor Webster, but have no acquaintance with him. I saw him on Sunday, November 25th, after the disappearance of Dr. Parkman.

I went to East Cambridge, to the Registry of Deeds, on that day, to see if the mortgage was cancelled; and I was told, that I could ascertain better, by going to the house of Dr. Webster. I took a Mr. Thompson, a clerk, I believe, in the Register's office, in a chaise, with me, and went to Dr. Webster's house. We arrived there about dark, and found him at home.

He invited us in, and Mr. Thompson informed him what was the object of our visit. I did not hear all that they said; but Dr. Webster went to an account-book, and turned over the leaves two or three times, and appeared to tremble badly. He then left the room. He was gone some two or three minutes, and then returned, sat down in a chair, and said, "It is strange, that I can't find those papers." He got up, and went to a trunk which was under a table in the front room, and then went back to the account-book on the centre-table.

He then had some conversation with the clerk, Mr. Thompson; but what it was, I do not know. He then sat down in a chair, again, and said, "My ticket-man told me, that Dr. Parkman came to him, and demanded what money he had in his possession, for the tickets which he had sold. My ticket-man refused to let him have the money; and thereupon Dr. Parkman told him, that I was a d—d rascal, and a scoundrel." Says Dr. Webster, "I thought hard of it, at the time; but I don't care about it now, as I have settled with Dr. Parkman, and it is all over." He had some further conversation with the clerk who went with me, and told him that the mortgage was on personal property, and not on real estate. I made the remark, that we should have to go, then, to the City Clerk's office, and see if Dr. Parkman had been there; and thereupon

turned, and left the room. I did not see Dr. Webster again that night. I was searching for Dr. Parkman, out of doors, until the Tuesday following.

On Tuesday forenoon, at about half-past eleven, I accompanied officers, Clapp, and Rice, and Mr. Kingsley, in the search of the Doctor's apartments. We went to the laboratory-stairs door, and found it fastened. We also found the store-room door fast. We then went up to the front door of the lecture-room. Mr. Littlefield knocked, waited a few moments, and then knocked again. Then Dr. Webster came to the door. I asked Dr. Webster, Who was with him, when Dr. Parkman paid him this money? He said, "No one, but myself." I asked, At what hour Dr. Parkman was there, when he paid the money? He said, "Between half-past one, and two o'clock." We passed down through the lecture-room, and round the end of the table. I asked Dr. Webster, Where Dr. Parkman stood, when he paid him the money? and he answered, "Here," pointing to the left-hand end of the table: — on Dr. Webster's left hand, as he would stand, when lecturing to the students.

We passed into the back laboratory; and, turning to a little room, he said, "This is where I keep my valuables." We then went down stairs, Dr. Webster going near me. Mr. Clapp, turning to the privy, asked, "What place is this?" Mr. Littlefield answered, "This is Dr. Webster's private privy." — Dr. Webster saying, at the same moment, "Gentlemen, here is another room that you have not looked into." Upon that, we passed to the store-room, and out; taking very little notice of what was in the laboratory. I did not notice what the others were doing, — Mr. Kingsley, or Mr. Rice. I know that Dr. Webster led off to another door. He seemed to be hurrying us through the room.

After we had looked at the main vault, I then passed to the scuttle, that leads under the main building. I took my lantern, and went down underneath, with Mr. Littlefield, and crawled as far as we could, for the walls. [Witness pointed out upon the plan, the route that he and Littlefield pursued.] We crept on our hands and knees until we got against the place where the privy is. There was no hole in the wall at the time. There was a conversation between Mr. Littlefield and myself, while we were out there, in relation to the position of the privy. I have since been through the hole made by Mr. Littlefield, three separate times, and have thoroughly examined the cellar-walls, twice. There is no access for the flow of the tide, except through small crevices.

I am the officer who discovered the remains in the tea-chest. I had been searching, from half-past eight, A. M., until four, P. M., of Saturday, December 1st. I had seen the chest once before, but did not touch it. Others were searching with me, — some six or eight persons. I told them that I would search that side of the building, and go through it thoroughly.

I looked over some things on the shelves, until I came to the tea-chest. I thought, that it was where Dr. Webster kept his minerals; but that, as I was searching, I would look into it. I took out some minerals which were done up in papers. The writing on them appeared to be fresh. After getting out the minerals, I found that there was tan in the chest. I ran my hand into the tan, and took out a hunting-knife, which I opened, looked at, and placed in my pocket. I then put my hand in, again, and feeling something wet and cold, remarked, that I thought there was more than tan, in the chest. I took the chest out to the back side of the room, and turned it over, when the trunk of a human body tumbled out, with one of the thighs placed inside of it; the thigh being tied round with a piece of twine at one end. I stood on the right side, and saw a hole in the left breast, just under the left nipple. The tan was scraped off only with the hand. I forbade an officer to use a stick, and it was not used. Remarks were made about the hole, at the time. I said, that I supposed that the knife I had, would fit the hole; but I did not try it. [Witness identified the tea-chest in which the remains were found.]

I found one of the kidneys, in the ash-hole, on Sunday. In the lower laboratory, on the table, were found a comforter, and two woollen blankets, done up in a newspaper. The table was near the window. I should think that they had never been used, either one of them; but were entirely new.

I remained at the College, from the first of December, until the third of January, 1850, from seven o'clock in the morning, until eight at night. No one was allowed to enter the rooms without a permit from the Mayor, or Marshal.

The privy-hole was nine and three quarters inches across, each way. We tried the experiment of getting the thorax through it, but found that it would not go; the hole was not large enough. The pelvis would go through, by turning it up edgeways, as I should call it.

Another person, (who, I do not now recollect,) and myself, have also made some experiments in regard to overhearing noises from Professor Webster's rooms, in Dr. Holmes's room,

and *vice versa*. We would place ourselves in the two professors' rooms, and then shout, having first shut the doors. Nothing could be overheard.

To the Chief Justice. — I was both above, and below. I was below, while the other person went up stairs, and then he came down, and I went up. I could hear nothing, myself; only know, as to his being able to hear, by what he told me.

[A small china, or earthen plate, with some dried coloring matter, (apparently ink,) upon it, and a pine stick, about five or six inches long, and about as large round as a goose-quill, with a small wad of cotton, or other fibrous substance, tied round the lower end with a thread, (the instrument having been apparently dipped into the coloring-matter, and used for marking or writing,) were here shown to the witness, by the Attorney General, and he was asked, When and where, if ever, he had seen them before ?]

Mr. Fuller, resumes. — I have seen the plate, and the stick with cotton on it, or the cotton-pen, before, in the Doctor's upper laboratory; first saw them, on Saturday, the day after his arrest. The plate was on the bench, some five or six feet from the lecture-room door, and the cotton-pen lay under the table.

Cross-examined, by Mr. Sohier. — I measured the privy-seat, after it was taken up. The seat was up, when we tried the experiment with the thorax. Littlefield, Butman, and myself, tried the experiment. Littlefield held the thorax, and also the pelvis. The latter went through very easily. We found tan in barrels, about half a bushel.

We found a bag of tan, about eight or ten feet from the door which led into Littlefield's store-room. The bag was very nearly full.

I did not see the tea-chest on Tuesday; that is, to take any notice of it. The knife was shut, when I took it from the tea-chest. I can't say whether I put it upon a shelf; at any rate, it was in my pocket, a few moments afterwards. I have kept it ever since.

Mr. Tarlton, Mr. Butman, Mr. Starkweather, Mr. Rice, and Mr. Littlefield, I believe, were there, when the tea-chest was emptied. The officers were there, who were put on duty by the Marshal. When the thorax fell out, it fell out back up, precisely as it laid in the chest. I had looked at the thorax, four or five minutes, when I discovered the hole in the breast. I turned the thorax over, myself. I drawed the thigh, part-way out, myself, and let it lay in the tan, until the

coroner came. The string was tied round the lower joint of the thigh-bone, but not round the thorax.

No one was allowed to meddle with the thorax, until the coroner's jury came in the afternoon, a little past four o'clock. They had not met, when we found the tea-chest. Butman said, that he was going to scrape the tan off, and see how the body looked. I told him not to. I did not see officer Tarlton there, with a stick. The tan was not taken off, until the next afternoon. I scraped off what little tan was scraped off, with my hand. The neck end of the thorax was up, in the tea-chest, and I felt it cold when I put my arm in, as I have previously stated.

I told Mr. Thompson, the clerk who went with me to Dr. Webster's house, that I thought that the Doctor appeared very singularly; that I thought he trembled. I further told him, that I did not know but that it was his natural way. I had no suspicion of him, at that time. His manner was rather singular, quick and nervous. It was just after dark, when we arrived at Cambridge, on Sunday afternoon. Our object was, to ascertain the date of the mortgage.

Tuesday, the 27th, was the first time that I was at the College. Dr. Webster's words were, that "Dr. Parkman was at the College between half-past one and two, P. M." I did not state before the coroner's jury, that "Dr. Webster said that Dr. Parkman was at the College at half-past one, P. M.;" if I said so, I did not state it rightly. I made a memorandum of this conversation, either on the same night, or the next morning, before leaving the office. I think that I made a memorandum of the Sunday's conversation with Dr. Webster, on the next Monday forenoon. I did not put down there, that he trembled, but believe that I said that he was very much excited.

I think that Mr. Clapp was by the privy-door, when the answer was made by Littlefield, as to what the privy was. I did not notice a fire in the furnace of the lower laboratory.

There is a trench round the foundation-wall. The tide flows in the trench under the laboratory, and not over the whole ground; — to judge from the appearances of the ground. The trench, I should think, is three feet deep. The ground slants towards the north and west sides. A man cannot stand upright, except in the trench. The slope is not very steep, by the privy; when you get about six feet from the hole, it is much steeper. I can't state what the angle is.

I found the towels, directly under the privy-hole. The

labels of the minerals did not look as if they had been written a long time; they might have been written five or six months.

To the Attorney General. — Mr. Eaton was there, after I had taken the tea-chest out by the window.

S. PARKMAN BLAKE, *sworn, — examined by Mr. Bemis.* I am a nephew of the late Dr. George Parkman.

I took a very active part in the search for him. In connection with that, I called on Dr. Webster at the Medical College, on Monday morning, after his disappearance, between ten and eleven o'clock.

As I was going up the front steps, I met a person, apparently a student, of whom I inquired for the janitor; and he rang the bell for him. Mr. Littlefield presently appeared, and I inquired of him, if Dr. Webster lectured that day, and told him, that I wished to see the Doctor. Mr. Littlefield replied, that he did not lecture that day, and that he believed he was then in. He tried the door of the lecture-room, and it was fastened. Mr. Littlefield asked my name, and said that he would go round the back way, and give my name to Dr. Webster; and he went down the stairs from the front entry. After waiting, what I thought, was an unreasonable time, he unbolted the front door of the lecture-room, passed out, and I went in.

I saw Dr. Webster coming out of his back private room. He had on a smoking-cap and working-dress. I took particular notice of his appearance, as I descended the steps of the lecture-room. He stood, fixed to the spot, until I approached him.

I told him, that I had learned that he had had an interview with Dr. Parkman, and that I had come to learn all the particulars of that interview. Dr. Webster then went on to state, that on the Tuesday preceding Dr. Parkman's disappearance, (Nov. 20th,) the Doctor had called there, before his lecture was finished. That he sat down, and waited for the lecture to close. (Dr. Webster pointed out the seat he occupied.) That he sat leaning upon his elbows, waiting very patiently for him to close.

After the lecture was finished, (he went on,) "Dr. Parkman came up to the table, and said, 'Doctor, I want some money today: —'" he was very much excited, and very angry — "'You have $500 in your pocket, and I want some of it.'" His own countenance lighted up, and expressed great anger, while relating the interview. Dr. Webster said, that he told Dr.

Parkman, that he could not pay him on that day, as he had not collected all the money for his tickets. Then, Dr. Parkman asked him, When he would pay him? and he said, On Friday. That, Dr. Parkman then went out.

Dr. Webster said, that, on Friday, the 23d of November, on coming into the city, he had called at Dr. Parkman's house: that, he saw him at the door, and told him, if he would come to the lecture-room, on that day, after lecture, that he would settle with him; and that, he did come, about half-past one, P. M. I asked him, how he knew about the time. He said, that his lecture had been finished, and three of the students had stopped, after the lecture, to ask questions, as they were accustomed to do. That, after the questions, the students went into the back part of the room, to look at some pictures, one of which had recently been put up there. The students then went out, and very soon, Dr. Parkman appeared.

He came in a great hurry, up to his table, where he was standing. Dr. Parkman asked him, "If he was ready for him?" and Dr. Webster said, he was. Dr. Parkman took out of his side-pocket, a bundle of papers, done up loosely,—in a brown paper, I think, —and drew out some notes, and he, (Dr. Webster,) took out his money, and paid him, $483 or $484, and some odd cents. There was a "four" about it, but I cannot tell whether it belonged to the dollars, or the cents. He seized the money, without counting it, and was going off. "I said," said Dr. Webster, "'there is one thing, which you have forgotten, Doctor. — Where's that mortgage?'" Dr. Parkman replied, "I have n't it with me, but I will see that it is properly cancelled." He then rushed out of the lecture-room, with these bills in his hand, carelessly exposed to view.

I then asked him to recollect, what money he paid him; as it was very important, and might lead to a discovery. He said, that he could recollect but one bill; a $100 bill on the New England Bank. I pressed him rather close, knowing its importance. I asked him if they were out-of-town bills, or, city bills? — of large, or small denominations? He replied, that he could recollect only that one $100 bill, on the New England Bank. I asked him, If he had the notes, which Dr. Parkman had given up to him? He answered in the affirmative; but in a way, which made an unfavorable impression on my mind. His eyes dropped, and he did not look me in the face. I asked him, If any one was present at the interview? and he said, very emphatically, "No." He then turned the conversation to the subject of our families, Fayal, &c., and I shortly after left.

I had been acquainted with the Doctor, for a good many years. I noticed that his manner was singular, on my first entering his room. He seemed to want that cordiality and politeness, that are usual to him. As I came down the lecture-room steps, I had my eye on him, and thought that he looked pale. He received me in a stiff and formal manner; and I am quite confident, that he did not put out his hand to me. His manner, when speaking of Dr. Parkman's being angry, was singular, I thought. He stood, fixed to the spot, and seemed to place himself on the defensive, as if waiting to be interrogated. He made no expression of sympathy for the family of Dr. Parkman: this, I thought strange, when every person one met in the streets, expressed so much. He said very little about the search, and made no inquiries at all, about the family of Dr. Parkman. The interview lasted some fifteen or twenty minutes. He changed his position and manner, after we had commenced talking upon general subjects; but, they remained the same, while we were talking of Dr. Parkman. I went out by the same door at which I entered, and I heard him bolt the door after me.

Cross-examined, by Mr. Sohier. — I cannot recollect, whether Dr. Webster waited on me to the door. I only infer that he came up there, from hearing the bolt slide, after I went out. I heard of the disappearance of Dr. Parkman, about five o'clock, on Saturday afternoon. I felt very great apprehension, myself, at that time.

Dr. Webster appeared to be preparing for his lecture, of the next day. He told me so. He was moving about a jar upon the table.

I did not assist in the preparation of the hand-bills. I looked into the upper laboratory, after we had finished the conversation about Dr. Parkman. The one-hundred dollar bill, was the only one which he was able to recollect.

Charles B. Starkweather *sworn, — examined by Mr. Bemis.* I am a police-officer; have been connected with the police, four years.

I took part in the search for Dr. Parkman, as early as Saturday, the day after his disappearance; and continued to do so, till the time that the remains were found.

I accompanied Mr. Kingsley on his visit to the College, on Monday, November 26th. We went up the front steps, and saw Mr. Littlefield, and Dr. Bigelow, and, I think, Dr. Ainsworth. We made known the object of our visit; told them, that we had come to look over the College for Dr. Parkman. They

offered no objection, and we went into the College. Mr. Littlefield tried Dr. Webster's lecture-room door, and it was fastened. He knocked on it, two or three times, quite hard; and then Dr. Webster came, and opened the door. We told him, what we came for. He opened the door; we went in; down the steps, to the back laboratory, and to the lower laboratory. He followed us down. When we got to the steps of the lower laboratory, Dr. Webster said, "This is all my apartments." Mr. Littlefield opened the door into his own apartments, and we went out by the laboratory-stairs door. We merely looked round the rooms, and were not there, more than three minutes.

I was one of the party who went out to arrest Professor Webster, on Friday night, the 30th of November. Mr. Clapp and Mr. Spurr were with me. The Doctor talked very freely, while coming in, about the railroad to Cambridge, &c. He also spoke of a Mrs. Bent, who had seen Dr. Parkman, on Friday; and he wanted us to drive round over to the Port, to see her. We came over Cragie's Bridge, into Boston. Mr. Clapp talked with the Doctor. When we got to the corner of Second street, Dr. Webster remarked, "You ought to have turned that corner, if you are going to the College." Something was said, in reply, about the driver being green; but I could not hear perfectly, as I sat on the front seat, while the Doctor sat beside Mr. Clapp, on the back seat.

When we arrived at the jail, we got out, and went into the back office. Dr. Webster was the first person to speak; and, he said, "Mr. Clapp, what does this mean?" Mr. Clapp said, "We have done looking for Dr. Parkman, and you are in custody for the murder of Dr. Parkman." "What! me?" says Dr. Webster. "Yes, you, Sir; and you are in custody for the murder of Dr. Parkman." Mr. Clapp and Mr. Spurr then left us, and said, that they would go and see if they could find Mr. Parker and the Marshal. Mr. Clapp made out a *mittimus*, handed it to me, and said, "Don't commit the Doctor, until I get back." He had previously searched his person.

Immediately, after they had gone, Dr. Webster called for a pitcher of water, and drank several times. He asked me, "If they had found Dr. Parkman?" I told him, that I wished he would not ask me any questions, as it was not proper for me to answer them. He said, "You might tell me something about it." — "Where did they find him?" "Did they find the whole of the body?" "How came they to suspect me?" "Oh! my children, what will they do?" "Oh!

what will they think of me?" "Where did you get the information?" I asked the Doctor, If any body had access to his private apartments, but himself? "Nobody has access to my private apartments," he replied, "but the porter, who makes the fire." There was a pause, for something like a minute and a half, when the Doctor added, "That villain! I am a ruined man!" There was no further conversation. The Doctor would walk the floor, and wring his hands, and then he would sit down.

I saw the Doctor put his hand to his vest-pocket, and put it up to his mouth; and, in a moment, he had a spasm, as if in a fit. I went to him, and said, "Doctor, have n't you been taking anything?" and, he replied, that he had not. I then helped him up from the settee, and he walked the floor. I was with him about an hour, when Mr. Clapp came back, and told me to commit him. I went to him, and told him, that I must commit him.

I took hold of his right arm, and he could not stand. I asked Mr. Cummings, one of the attendants, to take hold of him. He did so, and we led him to the lock-up. I told Mr. Cummings, that I thought he had been taking something, and that he had better send for a physician. I said this, to him, in the Doctor's hearing, when we got to the lock-up, underneath the office. Mr. Clapp thought that we had better not send for a physician, but go down every few minutes, and look to him.

We had to lift the Doctor up, and lay him in his berth; we laid him upon his side, and he turned over upon his face. He had a spasm, every now and then, and appeared like a man in a fit. I never saw a man in such a state, in my life. I have seen a great many men in fits, but, never one like him.

I left the Doctor, and next saw him, about three-quarters of an hour afterwards, at the Medical College. Dr. Webster, Mr. Parker, Mr. Andrews, Mr. Pratt, and several others, were up in the upper laboratory, when I came there. When the party were in the lower laboratory, some one asked the question, Where the furnace was? and Mr. Littlefield walked towards it, and pointed it out. While in the laboratory, the Doctor appeared very much agitated, — more so, than he did up-stairs.

I have had some fish-hooks, and twine, in my possession, which I now produce. These were found, just as they now are, in Dr. Webster's private room, in his upper laboratory.

[The witness exhibited the articles to the jury. The hooks were arranged in the form of grapples, and had attached to

them, leaden sinkers, of a pound's weight, or more. Pieces of twine, of perhaps six or eight yards in length, were wound around each. There were three of these grapples; one, composed of three hooks, one, of two, and one, of one. The fish-hooks, themselves, were some six inches long, with a bend, an inch, or an inch and a half, across.]

Mr. Starkweather, resumes. — I saw these articles, on Friday night; the night of the arrest. I took the hooks and twine, on Saturday. They were rolled up in a paper, on the shelf, in the back private room. There is another ball of twine, there, yet.

On Saturday, there was a general search. I was in the upper laboratory, and heard my name called in the lower laboratory. I went down there, and saw Mr. Fuller bringing out a tea-chest. Upon the thigh of the body, found in it, there was a quantity of twine wound round. I cut a piece of it off. [Witness exhibited the piece of twine cut off, with a label on it, for the purpose of identification.]

I found this bunch of skeleton-keys, [produced by the witness; some twenty-four in number, mostly new, or bearing marks of recent filing,] in Dr. Webster's back private room, in a drawer, tied up, as they now are.

[The witness was next asked, If he had made any trial of the keys, to see what doors of the College they fitted; and what doors those were?

The counsel for the defence, objected to the introduction of this evidence, as not sufficiently connected with the prisoner.

On the part of the prosecution, it was stated, that it would be shown, that the prisoner had represented, that he found the keys in the street; and that, tied in the same bunch with the skeleton-keys, were other keys, acknowledged by the prisoner, to be his. It was also urged, that, as the chemical-rooms were separated from the rest of the College, and had no necessary connexion with the others, as testified by Dr. Holmes, it might become material to show, that the prisoner had provided, or designed to provide, himself, with the means of access to other apartments, besides his own.

The Court held the testimony, to be admissible.]

Mr. Starkweather, resumes. — *This* key fits the dissecting-room. *This*, one of the locks of the door, between the lecture-room, and the back room; and *this*, the store-room door. The last, bears marks of having been recently filed. I cannot find, that the skeleton-keys fit any of the locks of the College. These two brass keys, (also found in the same

drawer of the back private room, but on a separate string,) fit the upper, and lower, front-doors. I also found, in the drawers of the back private room, or rather, in a cupboard, which was painted on the outside, so as to resemble drawers — [Further answer arrested.]

Mr. Sohier. — I should like to inquire, before permitting the witness to answer further, "What the Government expect to prove, in relation to that cupboard?"

Mr. Bemis. — We expect to show, that it contained a considerable quantity, and variety, of ardent spirits. I will add further, *(to the Court,)* that I do not know, in candor, that there is any necessary connexion, between the presence of spirits there, and the commission of the homicide by the prisoner. But we submit the evidence, for what it is worth, as having a possible connexion with his acts.

The Court deemed the evidence inadmissible.

Mr. Starkweather, resumes. — I have heard Dr. Webster make some statement, in regard to the skeleton-keys. When he was up for examination, before the Police-Court, while we were waiting in the judge's private room, I said to him, in the presence of Mr. Andrews, the jailer, "Doctor, I found some keys in your back room." "What," says he, "those that are filed? I picked them up, in Fruit street, one day, and threw them in there, into the cupboard."

Cross-examined, by Mr. Sohier. — I testified before the coroner's jury. I made minutes of things at the College, as I found them. I made a memorandum of everything. I began, when I commenced the search, on Saturday. I went everywhere, on the search, to Salem, Billerica, and other towns. At the time of the conversation with Dr. Webster, at the jail, I wrote it right down, and have the paper with me. I made this writing, before I testified before the coroner's jury. I don't think, that I said anything, then, about Dr. Webster's putting his hand into his pocket, and then putting it up to his mouth.

I was at the College, on Friday, the 30th, at half-past four o'clock, P. M., with Mr. Kingsley, and saw Littlefield. I asked him, If there was any place that had not been searched? He said, That all had been searched, but the privy. I said, "Can we not get in, there?" Mr. Littlefield said, "No, Dr. Webster has locked it, and got the key." I spoke about coming, the next morning, and making search. I think, that Mr. Kingsley and I, went away, together.

I found the keys, all tied together, as at present, on a shelf, in the back private room. I did not say to Dr. Web-

ster, that I had found "skeleton" keys, but, as I have testified, on my direct examination. When we were in the carriage, we did not mention, about searching over the College. This was before we entered the carriage. I recollect about the Doctor's proposing to go back for his keys, and Mr. Clapp's telling him, that we had keys enough to gain admission with.

I mean to say, that I give the exact words of Dr. Webster's conversation, when I talked to him. I wrote them down, at the moment, while the Doctor was talking, on a piece of paper, as I was sitting by the side of the air-tight stove. I did not write down my own words.

CHARLES B. RICE, *sworn*, — *examined by Mr. Bemis.* I am a police-officer; was one of the party, who went to search Dr. Webster's apartments, on the Tuesday after Dr. Parkman's disappearance.

When we got into the lower laboratory, there was a conversation about the privy. The question was asked, If we had been everywhere? and the answer was, That we had seen everything, except the Doctor's private privy. The answer came from Littlefield, I think. Dr. Webster was present. This was the last room, we went into. Dr. Webster showed the way out.

I was there, the night of Dr. Webster's arrest, when he was brought to the College. I can't say, whether any inquiry was made about the furnace, while Dr. Webster was in the room. I saw Mr. Andrews, the jailer, go to it, when the inquiry was made.

Cross-examined, by Mr. Sohier. — I was present, when the tea-chest was turned over on the floor. Mr. Fuller, Mr. Starkweather, Mr. Eaton, and, I think, two or three others, were present. I saw the tea-chest turned over, and some tan brushed off. I don't think, that it was moved, until the coroner came. I saw some one stoop down, and brush off the tan; but, who it was, I can't say. I can't say, whether any one had a stick in his hand, or not; I don't recollect. It was before the coroner's inquest came. I think the question was put in this way, about the privy — "Whether we had seen the whole?" and the reply was, "We had, except the Doctor's privy, or the Doctor's private privy." The Doctor stood back towards the furnace, talking with Mr. Clapp. I was not talking with any one; could not say, in what part of the room he was.

SAMUEL LANE, Jr., *sworn, — examined by Mr. Bemis.* I am in the hardware business, at No. 9, Dock Square, in this city.

I know Dr. Webster; have known him, since 1835. I recollect the time of Dr. Parkman's disappearance. I saw Dr. Webster in my place of business, about that time. I do not recollect, distinctly, at what hour of the day; but, should think, that it was the after part of the day, from circumstances, that have been mentioned, since. I should think, the day must have been, the first Monday, or Tuesday, after Dr. Parkman disappeared, from my being absent from town, the Wednesday following, for some days. Dr. Webster came in, and inquired for fish-hooks. I replied, that we did not keep them, and he went out.

Mr. Stephen B. Kimball, was clerk in the store, at the time. This was in the store of Mr. R. C. Warren, with whom I was then a clerk, myself. I had seen Dr. Webster, there, before; and had often seen him, elsewhere.

No cross-examination.

STEPHEN B. KIMBALL, *sworn, — examined by Mr. Bemis.* I am clerk for Mr. R. C. Warren, in Dock Square.

I know the defendant, by sight. On Monday, or Tuesday, of Thanksgiving-week, he called at our store, and inquired for large-sized fish-hooks. I recollect the day, from Mr. Lane's going away, on Wednesday. It was late in the afternoon, but sufficiently light to distinguish people.

No cross-examination.

JAMES W. EDGERLY, *sworn, — examined by Mr. Clifford.* I am a hardware dealer. My place of business, is No. 3, Union street, in this city.

I remember the time of Dr. Parkman's disappearance. A person came into my store, the Tuesday following, about night, and inquired for the largest-sized fish-hooks. I showed the largest size, that we had, and he bought, and paid for, a half dozen. These shown to me, are the same. [The grapples, produced by Mr. Starkweather, were here shown to the witness.] I identify them by a peculiar mark upon them, and they are of unusual size and pattern. I had had them on hand, a considerable time. I think that the defendant, Professor Webster, is the person who bought them of me. I did not then know him, but have since seen him at the jail, and in the court-house, here. He did not state any purpose, for which he bought them.

No cross-examination.

WILLIAM W. MEAD, *sworn,—examined by Mr. Bemis.* I am a hardware dealer, in Union street, in this city.

I do not know the defendant personally; have only had him pointed out to me, lately. On Friday, November 30th, the day after Thanksgiving, a person came into the store, and inquired for fish-hooks. I asked, what kind he wanted. He said, that he wished to have some, to make a grapple with. I took down the largest; and he bought three. I put them together, and showed him how to form a grapple. The size was considerably smaller, than that of those produced in court.

I think that it was Professor Webster; but should not wish to swear positively to it. He was dressed in dark clothing. I can't say, whether he had on glasses, or not.

I was afterwards called on, by officer Spurr, to go with Mr. Edgerly, to the jail, and see Professor Webster. I went in, and looked at him; and he, then, had on a smoking-cap, and a dressing-gown. I did not identify him at that time. Thinking that the dress might make a difference in his appearance, I said, that if I could see him with a hat and coat on, I could, perhaps, judge better. We went down again, and on some one's asking him to put on his hat and coat, he did so; and I thought that it looked like the same person, who had bought the fish-hooks of me.

I should say, that it was about a quarter of one, P. M., when he called at my store.

No cross-examination.

WILLIAM N. TYLER, *sworn, — examined by Mr. Clifford.* I am a rope-maker, and a twine and line manufacturer; have been in the business, forty-five years; have been called upon, frequently, to give an opinion as to the quality and manufacture of twine.

[The pieces of twine, produced by Mr. Starkweather, were here exhibited to the witness.] The twine shown me, [consisting of specimens from that tied round the thigh, that used with a grapple, and that found on the ball in the back private room,] is, what is called, two-threaded marline. I have not the slightest doubt, that all the pieces are of one, and the same, manufacture and quality. They are all made of good Russia clean hemp, which is unusual, in this sort of marline, at the present day. The water-rotted American hemp, is generally used for this description of twine. The Russia, is a better article, and is used on ship-board. This, however, is not such as they use at sea, but appears to have been hastily manufactured for common use, in the shops.

Cross-examined, by Mr. Sohier. — I undertake to say, that the different pieces shown to me, are one, and the same, article. I judge of the specimens, by the material, and manufacture. I do n't mean to say, that they were cut from the same ball. We usually manufacture, from twenty to fifty fathoms, in a piece. The article differs, generally, in the quality of the two ends. This, I should say, is from the "wheel-end."

To the Attorney General. — There is a considerable quantity of this kind of twine made for ships' use, but not much of it sold for common purposes.

NATHANIEL WATERMAN, *sworn, — examined by Mr. Bemis.* I am a tin-plate worker, at Nos. 83 and 85, Cornhill, in this city: know the defendant; have known him, ten or twelve years.

I saw him in my place of business, on Friday, November 30th, the day of his arrest, at about ten o'clock in the forenoon. Seeing him in conversation with my foreman, Mr. Lothrop, and feeling anxious about the disappearance of Dr. Parkman, I went up to him, and said, "Excuse me, Doctor, but I want to know, how Dr. Parkman appeared, when you paid him that note." He said, "He took the papers in his hand, and darted out in his usual manner." "If that is the case," said I, "he did not get far from the College, before he was murdered; as some one, seeing his money, may have enticed him into one of his houses; and I believe, that if he is ever found, he will be found in one of his own houses; for I do not believe the story, of his going over Cragie's bridge."

Dr. Webster said, "He *did* go to Cambridge." He said this energetically, as if he was sure of it. He then said, "Only think of it, Mr. Waterman! A mesmerizing woman has told the number of the cab he went *away*," or, "*off*, in; and Mr. Fitz Henry Homer has found the cab, and blood has been found on the lining." There was no further talk about Dr. Parkman.

At this point, the Court, at two, P. M., adjourned to half-past three.

Afternoon Session. — Tuesday, March 26th.

The Court came in at half-past three o'clock, according to adjournment.

NATHANIEL WATERMAN. — *Examination continued.* — The subject, was, a tin box, about which Dr. Webster had been

talking, before I came up to him. I told Dr. Webster, that if he was going to put in a large-sized thing, of the whole bigness of the box, the sides must come up straight, without the edge being turned in. If made that way, the cover would have to go on the outside, and it would be more trouble to solder it on; but that if he was going to put in small things, it would do as it was. He said, that he was going to have "small things, say books, &c., put in." He then spoke of having the handles made very strong. I told him, that he could have a piece of tin put on where the handles would go, and then the box would hold a hundred pounds. He wished to have the handles on the cover, not on the sides. He said, that he would solder it up himself; adding, "You know I can do such things, myself." I left him standing by my foreman. There was to be only one handle, and that, on the top. I did not hear him say, when he wished to have it done.

I have done business for him, before. This is the account, [produced by the witness,] of different articles, which Dr. Webster has ordered from me, since the year 1843. I had never made any such apparatus as this, for Dr. Webster, before, nor anything precisely like it, for any one else.

The Doctor wanted the handle made very strong. On Saturday morning, it came down from the shop, labelled. It has not since been called for. I don't know, whether Dr. Webster was to call for it, or not. The label has upon it, "To be called for," and, "charged."

Cross-examined, by Mr. Sohier. — My store is near the Cambridge-Omnibus office. The box was made, as though it was to be filled with small things. I introduced the conversation, in regard to Dr. Parkman. I went up to Dr. Webster, of my own accord.

CHARLES B. LOTHROP, *sworn, — examined by Mr. Bemis.* I work for Mr. Waterman, the last witness; am his foreman.

I remember the occasion of Dr. Webster's calling for a tin box. He came, on Friday, the 30th of November, about ten o'clock, A. M., and wanted a square tin box. I showed him some, and he said, that they would not answer. He said, he wanted one "to pack things in." I asked him, What he wanted it for? and he said, "For books, &c." I asked him the size; and he gave me a piece of paper, with the dimensions, eighteen inches square, and thirteen inches deep. He said, that he wanted it made out of thick tin. I told him, that we generally made them of light tin, as that was all that was necessary to keep the air out. He wanted it made strong,

with the handle, so that it would not slip out. He wanted to know, if I could not make a groove in it. I told him, the best way would be, to have the edge turned over, one-half, or three-quarters of an inch on the top; that it would be easier to solder, so.

About this time, Mr. Waterman came along, and made some apology, or remark, about interrupting him. "How did Dr. Parkman appear, when you paid him the money?" he asked. The Doctor replied, "He took it in his hand, and darted off;" that, was his expression. Mr. Waterman, said, that he did not believe that story, about his going to Cambridge; that he did not believe, that Dr. Parkman got beyond the vicinity of his own tenements, in Grove street. The Doctor replied, "Oh, there is no doubt of that; he was seen going over the bridge." Dr. Webster stopped a minute, and then said, "Oh, Mr. Waterman! a woman that was mesmerized, named the number of the cab, which took Dr. Parkman off, and Mr. Homer has found the cab, with spots of blood on it." I asked, If it was Fitz Henry Homer? and Dr. Webster said, "Yes."

After we got through, I spoke to Mr. Waterman, about the box. Mr. Waterman told him, that if he would send the box in, after he got his things in, he would solder it up for him. "No, Mr. Waterman," said the Doctor, "I have got to send it out of town, and I have got soldering-irons, and will do it, myself." — As I understood him, he had got to send it out of town, to be packed. Mr. Waterman told him, that if he was going to solder it, himself, to have a holder made, to hold it down, as he could solder it, so, a great deal easier. I told him, that I would have the box done for him, to-morrow night, (Saturday.) He said, that he wanted it sooner; and I then told him, that I would have it done, by eleven or twelve o'clock, or noon; and he said, that, that would do. He spoke as though he had no kind of doubt, of Dr. Parkman's having gone to Cambridge.

Samuel N. Brown, *sworn, — examined by Mr. Bemis.* I am one of the toll-gatherers on Cambridge Bridge, — West-Boston Bridge. I knew Dr. George Parkman. I also know Dr. Webster.

On the 30th of November, I was at a grocery-store, at the corner of Cambridge and Grove streets, at a little before four o'clock. I saw Dr. Webster pass by the window. I went out, and walked down to the toll-house, with him. I asked him, if he could recognize that twenty-dollar bill: — a twenty-

dollar bill that I had taken in the morning. I did not show the bill to him.

(This twenty-dollar bill matter, was thus. — On the morning of the 30th of November, I was attending the toll-house, on the Cambridge side of the bridge. An Irishman came along, and offered me a twenty-dollar bill, to take his toll, of one cent, from. On his saying, that he had nothing smaller, I changed the bill for him, and took it over to the Boston side, and showed it to Mr. Hadley, one of the other toll-men. He thought, that it was advisable to preserve it; and I carried it home, and substituted other money for it: afterwards, Mr. Hadley showed it to the City Marshal. It was on the Freeman's Bank.)

I felt interested about the bill, and when I saw the Doctor, in the afternoon, I asked him, If he could recognize that bill? he said, "he could not; that the money, he paid Dr. Parkman, he had received from the students; some, in large, and some, in small denominations." I had not heard, that an Irishman had said, that he had received such a bill, from Dr. Webster. We parted at the toll-house.

I saw Dr. Parkman, on the Wednesday, or Thursday, before he disappeared. He came down to the toll-house, and asked me, If I had seen Dr. Webster, that morning? I told him, That I had not; and he turned, and went back to the city. It was between eleven, and one, o'clock. In fifteen or twenty minutes, Dr. Parkman came along, in a chaise, with the top turned down, and a white horse, and passed over the bridge. He had been down to the toll-house, twice within four or six days, to inquire for Dr. Webster.

Cross-examined, by Mr. Sohier. — I mentioned this conversation with Dr. Webster, to Mr. Hadley, as soon as I got to the toll-house. I did not make any memorandum of it.

Betsey Bent Coleman, *sworn, — examined by Mr. Clifford.* I reside in Cambridgeport; have known Dr. Webster, for a number of years.

I remember the day of his arrest, Friday. I saw him, that day, at my house, at about four o'clock, in the afternoon. He called, and the servant showed him in, without announcing his name. I knew him, however, as soon as I saw him. He said, that he had called respecting Dr. Parkman; and asked, What day I thought, that I had seen him? I told him, that I thought I saw him, on Thursday, before Thanksgiving, the day before his disappearance; that I was sitting at my window, in the afternoon, and saw him pass by,

as I thought. Dr. Webster then said, "Was it not Friday, you saw him?" I said, "No. I was very busy, on Friday, down in the lower part of the house." He asked, How he was dressed? and I told him, that he was dressed in dark clothes, and had a cane.

I asked Dr. Webster, If *he* had heard anything from Dr. Parkman? He said, that a cloak or coat had been fished up, which was thought to be his, which had spots of blood on it. There was a hat found, likewise. I said, "Oh, dear! then I am afraid he is murdered." Then he says, "We are afraid, that he is." He said, that there was a twenty-dollar bill left at the toll-house, by an Irishman, that was thought to be suspicious. He asked me, twice or three times, in the course of the interview, If I was sure that it was on Thursday, that I saw him? I accompanied Dr. Webster to the door, and he repeated it again, and asked, "Was n't it Friday, that you saw Dr. Parkman?" I told him, No; and this was the last that I saw of him.

Samuel D. Parker, *sworn, — examined by Mr. Clifford.* I was at home, in my parlor, on Friday, the 30th of November, about eight o'clock in the evening, when some ten or fifteen gentlemen, came in, quite suddenly, upon me. I recognized, among them, Dr. Henry J. Bigelow, Mr. Edward Blake, Mr. Robert G. Shaw, Jr., Marshal Tukey, and others.

They stated, that they had come for advice, and directions; that, certain discoveries had been made at the Medical College, supposed to be connected with Dr. Parkman's remains, and that, Dr. Webster was then lodged in jail. I told them, that, if they were satisfied that the remains were human, the coroner should be sent for, to take charge of them. The matter of holding Dr. Webster, was next talked of; and I told them, that a complaint must be made before a magistrate, and that Judge Merrill, of the Police Court, would be the nearest, to send for. Some one went for him, and he came. He declined to act, at first, on account of of a distant relationship to Dr. Webster; but, finally, considering that that circumstance, could not interfere with his discharge of a ministerial duty, consented to issue a warrant, if I would draw the complaint. A difficulty then arose, about the person who should make the complaint; and, after some ten minutes' delay, Mr. Kingsley volunteered to assume the responsibility. The complaint was duly made out, and sworn to, and the warrant signed, and issued.

I supposed, that all proper care had been taken of the re-

mains that had been found. But, on some statement being made, that they were in an exposed condition, I recommended, that gentlemen of chemical and anatomical skill, should be sent for, to examine them; and Dr. Martin Gay, and some other physician, were sent for. Dr. Gay came; and it was proposed, that we should first go down to the jail, and see Dr. Webster. Mr. Blake urged my presence, and I consented to go.

When we got to the jail, I inquired for Mr. Andrews, the jailer, and found that he was not there. Mr. Leighton, the clerk, however, was present, and we inquired of him for Dr. Webster. Understanding that he had come cheerfully into town, I expected to find him as usual. I had not the least idea, that there was any real cause of suspicion against him. I mean, that I did not suppose, that there was anything, that he could not readily explain. I asked Mr. Leighton, to send for Dr. Webster, to come up from the lock-up, where I understood he had been placed. Mr. Cummings, the turnkey, went down, and came back with word, that he could not stand, and was not in a condition to come up. I then asked Dr. Gay, if he would not go down and see him; he consented, and went down. I did not accompany him, but remained up-stairs with Mr. Spurr.

In a short time, the officers came up, with Dr. Webster; Mr. Leighton supporting him under one arm, and Mr. Cummings, under the other. They placed him in an arm-chair. He was very much agitated and convulsed, and asked for water. He recognized me, and called me by name, and also Dr. Gay. Water was handed to him in a tumbler; but his agitation was such, that he could not hold it. I asked Dr. Gay to assist him; and he supported his head, with one hand, while he held the glass to his lips, with the other. In this way, I believe, that he succeeded in getting some water into his mouth. He appeared to be in great distress; particularly, in regard to his separation from his family. I begged him to be calm; told him, that we had not come to harm him; and expressed my commiseration for his condition. I had known him personally before, and also, his father, for a long time. I also asked Dr. Gay, to try to soothe him; and he did so, in a most sympathizing manner.

I told Dr. Webster, that, we all had duties to perform, and that they must be performed; and that one of them, was, to enter upon the investigation, now called for, by the supposed extraordinary discoveries, made at the Medical College; that, these discoveries required explanations, which, perhaps, he could give; that, as further search would be requisite, and

some of his apartments, under which the remains had been found, had not been opened, I wished that he would go with the officers, and see them opened. He said, that he would go, if he could. I told him, that there was a coach at the door, all ready to carry him. He wished to have Mr. Franklin Dexter, or Mr. William H. Prescott, sent for. I told him, that Mr. Dexter lived out of town. He said, that some of Mr. Dexter's family were at the Revere House. I told him, that it was too late, that night, to notify the gentlemen he had named; but, that, they should have early notice, the next morning. He spoke, two or three times, of the distress of his family; which induced me to remark, that there was another family, which had been in great distress for a week, and that we owed duties to society, as well as ourselves. I also said to him, that there would be an opportunity afforded to him, to make any explanation which he saw fit; and that, I hoped to God, he would be able to explain the whole of it.

When I left my house, I was incredulous of his guilt. At the jail, I tried to soothe him, all that I could; and I said to the officers, that he was not to be interrogated.

Dr. Webster got into the carriage, with some assistance. I did not accompany him, but rode down to the College before him, in another conveyance. While at the College, I did not speak to him, at all, that I remember. I recollect the occurrence of the same convulsions, in the lower laboratory, as Dr. Webster had previously had, at the jail. He asked for water, about the time they were breaking open the privy-door. I remember, before we left the room, that Mr. Andrews, the jailer, called my attention to the bones, or to something worthy of notice, in the furnace. When we were looking at the remains, I asked Dr. Gay, If these were human remains, and parts of one body? And he answered in the affirmative. The defendant stood, then, about nine or ten feet off from them; but was asked no questions, and said nothing. I left the College, in company with Dr. Gay, having first given directions that proper care should be taken of the remains.

Cross-examined by Mr. Sohier. — I did not send to Mr. Dexter's, that night; it was after twelve o'clock, when I reached home. I called early the next morning, however, upon his son, at the Revere House, myself, and communicated Dr. Webster's request.

Direct, again. — I attended in the Police Court, when the defendant was arraigned. He there waived an examination; or rather, his counsel, Mr. Dexter, so signified to the Court, on his behalf.

JOHN M. CUMMINGS, *sworn, — examined by Mr. Bemis.* I am watchman, and turnkey, at the jail.

I was present, when Dr. Webster was first brought to the jail. Mr. Clapp left him in the back room, and went away a short time, and then returned, and told me to commit him. I took the key, and went into the back room, where he was sitting on the settee, and spoke to him two or three times, to get up and go with me. He made no answer, and did not seem to take any notice of what I said. Mr. Starkweather and I then went to him, and took him by the shoulder, and helped him up, and assisted him down stairs into the lock-up. He could not walk, and was in a very bad state. We had to hoist him up into his berth, and laid him in, with his face downwards. He spoke of his family, several times, and wanted water.

Later in the evening, Mr. Samuel D. Parker, and several other gentlemen, came to the jail, and wanted to see Dr. Webster. I took a key, and went down and unlocked the lock-up, and told him, that I wanted him to come up stairs; that Mr. Parker wanted to see him. He did not take any notice of what I said. I took hold of him; he appeared to be very much agitated, and made the remark, "I expected this." I found, that, I could not handle him alone, and went up stairs, and told Mr. Parker, that he could not come up. Then Dr. Gay, Mr. Leighton, Mr. Pratt, and Mr. Jones, came down with me. Dr. Gay asked him, if he could not get up and go up stairs. He made no answer. We then took hold of him in his berth, and he made a spring and grabbed his arm about Mr. Jones's neck, as if frightened. We then brought him up into the back office, and set him up in an arm-chair.

Mr. Leighton and I, helped Dr. Webster into the carriage, to go to the College. I rode outside. We helped him out of the carriage, and up the steps; and I don't know that I gave up my hold of him, until we returned from our visit to the College. We were detained on the steps for some time, before we gained admission to the College. He trembled, and had a cold sweat on him. His face was quite wet; the wind blew at the time, and the weather was cold.

When the party were searching the little back room, the Doctor stood where he could look in. A coat was found, and the Doctor said, "That is the coat I lecture in." They were searching some drawers, and the Doctor said, "I don't know what they want, there; they will not find anything improper, there." When the Doctor was in the lower laboratory, he felt very badly. He had the same affection, as at the jail.

We lifted him into the coach, when we left the College. He could not help himself, at all. We set him upon the back seat. He spoke of his family, again, as we rode back to the jail. While riding back, I noticed that his pantaloons were quite wet. His legs came in contact with mine, and I felt the moisture through. When we took off his outer coat, to hoist him into his berth, after we returned to the jail, I noticed that his under-coat was so wet, that I could feel the moisture on the outside. We had to carry him down to his cell. We left him in his berth, lying on his back, with his head bolstered up, having fixed him as well as we could. We bolstered him up, at his request; he said, that he always laid so.

I went down to see him, twice, after this; at one o'clock, and, again, at half-past two. He lay, just as we left him; awake, but seeming to be in distress. I put a lantern through into his cell, and left him for the night, at half-past two.

I recollect the question being asked, "Where the hatchet was?" which was found in the sink, while we were at the College; and Littlefield's going and finding it: but I don't know, who told him where it was.

Cross-examination waived.

Gustavus Andrews, *sworn, — examined by Mr. Bemis.* I am keeper of the Leverett-street jail.

I remember the night of Dr. Webster's arrest, the 30th of November. I was not at the jail, when he arrived. I first saw him at the College. I returned to the jail, shortly after he left, and finding the *mittimus*, and not the prisoner, I started to find out, by what authority he had been removed. I went to the College, and entered through the east door, into the laboratory. Just as I got in, Mr. Parker, the County Attorney, and quite a number of gentlemen, came down the stairs. Some one, I think, Mr. Parker, presently called my attention to the furnace. I went to it, and saw fragments of bones, — a piece of skull, I should think; and when I turned round, Dr. Webster was standing about three feet from the privy-door. He was then in a state of very great excitement. This was about the time that the privy-door was broken open.

I accompanied the party into the room, where the remains were exhibited. When we went in, and were waiting, Dr. Webster placed his feet down firm, as if to brace himself up; but as soon as the remains were brought up, he commenced trembling again. He stood about nine feet off from them.

After he had remained there, looking at them some minutes, I asked Mr. Parker, If anything further was wanted of Dr. Webster; and whether he ought not to be taken back to the jail? He replied, that he had nothing to say about it; and I took upon myself to direct, that he should be taken to the carriage again.

When we got to the carriage, I found that Dr. Webster was unable to get in. His limbs were perfectly stiff; he could not bend his legs, at all. I got in, first, and helped draw him in, as if his body were in one straight piece. We placed him on the back seat, and he fell back, as if faint, and unable to support himself. The first thing he said, was, "Why don't they ask Littlefield? He can explain all this; he has the care of the dissecting-room. They wanted me to explain; but they did n't ask me anything." He then said, "Oh, dear! What will my family think of my absence?" I said to him, "I pity you, and I am sorry for you, my dear sir." He replied, "Do you pity me? Are you sorry for me? What for?" I said, — "To see you so excited; I hope you will be calmer." He said, "Oh! that 's it." Nothing more was said.

We took him to the jail, and put him into his cell. He was unable to get upon his bed, and we lifted him in, and left him lying upon his back, with his head bolstered up. I had a lantern placed in the cell, and afterwards watched him, some time, through the opening into the lower corridor. Seeing that he did not move, I left him for the night. I visited him in the morning, and found him just as we left him, at midnight. I do n't think that he had moved an inch, all night long. He wanted to be raised up; and, in the course of the forenoon, was able to sit up in a chair.

During that morning, Saturday, Dr. Webster said, (without my asking any question to lead to it,) "That is no more Dr. Parkman's body, than it is mine; but, how in the world it came there, I do n't know." He then said, "I never liked the looks of Littlefield, the janitor; I opposed his coming there, all I could."

The Doctor was in such a state of perspiration, the night before, that I could feel the dampness upon his shoulder-blades, through his coat.

I have in my possession, a letter of the prisoner's, which came into my hands, as letters generally do, from those confined in the jail, by being brought to the office by the turnkey. The rule is, that all letters shall be examined, before they go out of, or into, the jail. This letter was brought up,

Tuesday morning, December 4th, open. I cannot say, who brought it up. Mr. Holmes, the turnkey, called my attention to a certain clause in it, and asked me, if I should let it go out. My answer was, that I should keep it, till I had given the officers an opportunity to make inquiry, in regard to the matter there referred to. Mr. Hopkins, the police-officer, called in, shortly after; and when I showed him the letter, he said, that he would make the inquiry. I also mentioned the matter to Mr. Clapp, and he said that he would send some one out, and attend to it, that day. I did not hear from Mr. Clapp, till the next day; but the letter was detained, and never sent. I allowed other letters to go; but, after the search of Dr. Webster's house, I told him, that if he had anything to communicate to his family, that he did not wish me to see, he had better have his wife, or some of his family, come and communicate directly with him. I told Mr. Prescott, and Mr. Cunningham, also, that they had better tell him the same.

[The following is a copy of the letter in question, which was read by Mr. Bemis, and put into the case. It was addressed to "Miss Marianne Webster, Cambridge."]

"Boston, Monday ev'g.

My Dearest Marianne. I wrote mamma, yesterday, and Mr. C., who was here, this morning, told me, he had sent it out. I had a good sleep, last night, and dreamt of you all. I got my clothes off, for the first time, and awoke in the morning, quite hungry. It was a long time, before my first breakfast from Parker's came; and it relished, I can assure you. At one o'clock, I was notified that I must appear at the Court-room. All was arranged with great regard to my comfort, and avoidance of publicity, and this first ceremony went off better than I anticipated. On my return, I had a bit of turkey and rice from Parker's. They send much more than I can eat, and I have directed the steward to distribute the surplus to any poor ones here.

If you will send me a small cannister of tea, I can make my own. A little pepper, I may want, some day; you can put it up, to come with some bundle. I would send the dirty clothes, but they were taken to dry, and have not been returned. I send a kind note, I received to-day, from Mr. Curtis. Professors Pierce and Horsford, called to-day. Half a dozen Rochelle powders, I should like. Tell mamma, *not to open* the little bundle I gave her the other day, but to keep it just as she received it. — Hope you will soon be cheered,

by receipt of letters from Fayal. With many kisses to you all. — Good night, from

Your aff't father.

P. S. My tongue troubles me yet, very much, and I must have bitten it in my distress, the other night; it is painful, and swollen, affecting my speech, somewhat.

Had mamma better send for Nancy? I think so; or, Aunt Amelia.

Couple of colored neck hdkfs. One Madras."

Cross-examined, by Mr. Sohier. — I refer to the passage, "Tell mamma, *not to open* the little bundle," &c., as the one which induced me to retain the letter.

ELI C. KINSLEY, *sworn, — examined by Mr. Bemis.* I am postmaster at East Cambridge.

[A letter, inclosed in a red envelope, of which a fac-simile is hereafter given, in connexion with Mr. Gould's testimony, was here exhibited to the witness, and he was asked, When, and where, he had seen it, before?]

I took the letter, shown to me, out of the East Cambridge post-office, November 30th, and brought it over to Mr. Tukey, the City Marshal, myself, the same day. It must have been dropped in, between ten o'clock, and twenty minutes past ten, in the morning. I brought it over to the city, at about half-past eleven, having first put on the post-mark.

Cross-examined, by Mr. Sohier. — I intended to mail it, in the first instance, but afterwards concluded to bring it directly over. Its peculiar appearance attracted my attention.

FRANCIS TUKEY, *called a second time, — examined by Mr. Bemis.* [Three letters were exhibited to the witness; — one, inclosed in a yellow envelope, bearing a post-mark of "Boston, Nov. 26th;" one, in a red envelope, bearing the post-mark, "East Cambridge, Nov. 30th," (testified of, by the last witness,) and one, bearing the post-mark, like the last, of "Boston, Nov. 30th;" — and he was asked, When, if ever, and from what source, he had received said letters?]

The first of the letters inquired of, I received through the Boston post-office, on the day of its post-mark, Nov. 26th. The second, I received from the hands of the East Cambridge postmaster, on November 30th, at about half-past twelve; and the third, I think that I took from the Boston post-office, on the same day, the 30th.

The Attorney General here informed the Court, that the opening evidence for the Government, was now all in, with the exception of the proof, which it was proposed to adduce, to show that the letters just shown to Marshal Tukey, were written by the prisoner: and it being now twenty minutes to seven o'clock, P. M., the Court adjourned to nine, A. M., to-morrow, (Wednesday,) morning.

EIGHTH DAY. — *Wednesday, March 27th.*

The Court did not come in, this morning, till nearly ten o'clock.

NATHANIEL D. GOULD, *sworn, — examined by Mr. Bemis.* I am a resident of this city; have been so, for many years. I know the prisoner, and have known him, for a long time, by sight; but I have had no personal acquaintance with him.

I have never seen him write, but have seen, what I suppose to be, his handwriting. I am familiar with his signature. I have seen it appended to the diplomas, given by the Medical College, for twenty years, in connection with those of the other medical professors. I have had occasion to take notice of it, there, from having been employed as a penman, to fill out those diplomas for the College.

I have paid particular attention to the subject of Penmanship, having practised it in every way, and instructed in it,— for some fifty years. I have also published, on the subject.

Mr. Bemis, to the Witness. — Please look at the three letters, before you, [the same produced by Mr. Tukey,] and state, if you can, in whose handwriting they are; or, by whom, in your opinion, they were written?

Mr. Sohier. — We object to this proof. No proper foundation has yet been laid by the Government, for the statement of the witness's opinion. The witness has never seen the prisoner write, nor heard him admit any writing, to be his.

Chief Justice. — He has had occasion, officially, to know his handwriting, for many years.

Mr Sohier. — This kind of evidence, if admissible at all, belongs to a class of evidence exceedingly liable to error; and we do not intend to take the responsibility of permitting it to be introduced, without interposing an objection. We sup-

pose that it is offered, on the ground of the decision in the case of *Moody* v. *Rowell*, 17 Pick. 490. We do not mean to object to the authority of that decision, but trust that the Court will not go beyond it.

That case, as we understand it, sustains three propositions. First, that genuine handwriting may be laid before the jury, for the purpose of comparison with that alleged to be by the same person. Secondly, that an expert may determine, and testify, from knowledge gained by comparing such specimens, whether the handwriting, in question, is genuine, or not; and, Thirdly, that an expert may be permitted to give an opinion, whether the imitation of another's handwriting, is in a disguised, or simulated hand.

This case does not come under either of these propositions. The Government do not now propose to prove, that, these letters are in the handwriting of the prisoner; but that, though he wrote them, they are *not* in his (ordinary) handwriting; and they call an expert, with a view, doubtless, of instituting a comparison between the writings now in the case, or which may hereafter be put in, in order to enable him to form an opinion upon that point.

Attorney General. — I think that the learned counsel misapprehends the ground upon which we offer this evidence. We *do* propose, strictly, to prove that these letters are in the handwriting of the defendant, — using the term, "handwriting," in its proper and enlarged sense. The gentleman's argument supposes, that if a person's handwriting were generally uniform, but he were occasionally to vary it, that, evidence of the varied style would be incompetent: whereas, if it were always uniform, we might have the opinion of the expert, to prove or disprove it. Such a distinction cannot have any foundation in principle.

It is conceded, that the opinion of the expert is competent to prove a forgery *by another*. We seek here, only, to show that the defendant has been attempting to conceal, or disguise, *his own* style of writing. Upon principle, which is the more suitable subject for proof, by the expert? Plainly, the latter; for the expert's opinion, then, is only required to extend to a knowledge of one person's handwriting; — to show how much a writer differs from himself: whereas, in the other case, he is expected to be able to tell, how much the writer differs from some third person.

The case of *Moody* v. *Rowell*, I submit, fully covers the ground contended for. But there is one English authority, also, directly in point; I refer to, *Rex* v. *Cator*, 4 Esp. 117.

In that case, which was a prosecution for libel, the point was distinctly ruled, that an expert might prove, that a document was written in a disguised hand, by the prisoner. I may be permitted, perhaps, to refer also to the ruling of a lower court, the Municipal Court, in two other trials, which were considered of great importance: that of George Miller, where both of my learned friends were engaged; and that of Eastman, Fondey & Co., a case which attracted great attention at the time. In both these cases, experts were admitted to testify to handwriting, for the purpose for which we offer the same kind of evidence, now. Nor am I aware, that there is any decided case, at variance with our position.

Mr. Merrick. — The precise question, now presented to the Court, has never been decided, that I am aware of. In *Moody* v. *Rowell*, the genuineness of the instrument was denied; here, its authenticity is asserted by the Government. The papers, there, purported to have been written by the party in whose name they stood; whereas, here, there is no suggestion that these letters purport to have come from Dr. Webster. Their very idea, as suggested upon the other side, is, that of anonymous, or disguised communications, and in a disguised hand.

Mr. Clifford, interposing. — We shall contend, that one of them, is in Dr. Webster's handwriting, upon its very face.

Mr. Merrick, proceeds. — The attempted mode of proof of that fact, at any rate, is not the common one. It is proposed, that an expert may take these papers, which do not purport to have been written by the defendant, and which, it is not pretended, are in the similitude of his handwriting, and may testify, whether they are, or not, of his writing. It will be attempted to be shown, by this expert, I presume, that they may be, or actually are, his, by analyzing the letters, and tracing the form of particular strokes of the pen, so as to connect the character of the manuscript with his. And now, when we say, that all experimental proof of handwriting by opinion, is of the weakest and most questionable kind of evidence, we submit, whether it will not be an extension of the rule, to permit experts to testify in the manner proposed.

Attorney General. — I find, that my friends on the other side, confine their remarks to one particular letter, which is of a peculiar character. I ought to have added, when I was up just now, that we expect to show, that, that document could not have been written by a pen. We also expect to satisfy the jury, from the testimony of Mr. Gould, that it could only have been written by an instrument, which was

found in the private room of Dr. Webster. This presents another ground for the proof of that particular document, in the manner in question.

Mr. Merrick. — I have only to say, that we do not object to the rule which has been heretofore adopted. It is only to its further extension.

With respect to the last suggestion, I have no opinion to express, whether an expert can, or cannot, prove, that a writing was produced by some other instrument than a pen. Certainly, the witness has not yet laid the foundation for the expression of any such opinion, by showing a knowledge, or skill upon the point.

Chief Justice, — (after conference of the Court.) — We do not see, that the precise point presented, gives rise to the objection, which has been taken and discussed. The witness was asked, whether he had a personal knowledge of the defendant's handwriting; and he has stated, that he has. His experience qualifies him to say this. Papers have passed under his notice, in a business, or official capacity, which have given him a long and familiar acquaintance with the defendant's handwriting; and he seems, therefore, competent to give an opinion in regard to it, independent of any skill of his own as a penman, or as a judge of penmanship.

In regard to the term, "handwriting," we think that it should include, generally, what the party has written with his hand, and, not merely his common and usual style of chirography. This question, of proof of handwriting, most commonly arises, and is discussed, in cases of forgery. But there are other cases, where the evidence of experts is applied to handwriting. One is, in prosecutions for Threatening Letters, or for Arson. There, the question is generally made, that they are not genuine, on the part of the person purporting to send them, but simulated and disguised; and the proof shows, that the writer did not seek to imitate a hand, but to depart, as far as possible, from his own. The evidence has always been considered admissible in those instances.

How much further, the counsel for the Government mean to go, here, we do not know; but, at present, we think that the letters may be put into the hands of the witness, for the purpose of allowing him to say, whether they were, or were not, written by the defendant.

Mr. Bemis, to the witness. — Please to state, then, whether you can recognize the handwriting of *this* letter, [showing, what will hereafter be known, as the "Civis" letter, from its bearing that signature;] and whose, in your opinion, it is? State, also, your reasons for your opinion.

Mr. Gould. — I think it is in Dr. Webster's handwriting. In giving my reasons for my opinion, there are some circumstances, which may appear trifling, to a person who has not attended to the subject. But, yet, I consider them important.

When any one undertakes to forge a hand, there are only two ways in which he can do it.

Mr. Merrick, interrupting. — Did I understand the Court, that the witness could go farther, than give his opinion? — or, is he to state the grounds and reasons for that opinion, which will involve the whole point in issue? The witness has stated his belief, that this is the handwriting of Dr. Webster; and, he suggests, that it is a delicate theory by which he may be enabled to explain it. This is somewhat peculiar, and different from the ordinary practice.

Attorney General. — If you will allow me, I will make one suggestion more. I suppose that the witness, so far as he is introduced here, as an expert, stands precisely upon the footing of any other expert; like Mr. Tyler, the twine-manufacturer, for instance, who was examined yesterday. If so, then he is to state the foundations of his opinion, like any other expert. The delicacy of the theory, as it is termed by the learned counsel, may be a matter of opinion. It may be, that this delicate theory will be made so perfectly transparent by the witness, as to satisfy every mind, that it is palpable and clear, in the nature of things; and, that, I suppose, is for the jury to decide, and not to be pre-determined, here. I trust that the witness will be allowed to explain the grounds of his opinion.

Chief Justice. — I do not understand, that there is any theory to advance. It is an opinion upon the question of handwriting. The witness has stated, that he believes it to be the defendant's; and, we think, that it is perfectly competent for him, to point out the circumstances which constitute the grounds of that opinion.

Mr. Bemis, to the Court. — I suppose that it will be competent for the witness, to make use of one or more of the genuine letters, in the case, as a means of explanation of his opinion.

Chief Justice. — That will be a subject for consideration, hereafter, if necessary.

Mr. Bemis, to the witness, again. — State the grounds of your opinion, then, that this is in Dr. Webster's handwriting, from your own personal observation of it.

Mr. Gould, resumes. — As I observed, at the commence-

ment, it is impossible for me to explain the reasons for my opinion, without going into some particulars which may seem very trivial, but which are absolutely necessary, for my purpose.

In all the practice that I have ever had in writing, I never have been able to satisfy myself, that I could make two letters precisely alike; — so perfectly similar, as to correspond throughout, if placed one upon the other. And yet, I never saw two handwritings, which I could not distinguish. When I have had a large number of scholars in writing, I have always been able to tell, which of them wrote the specimen exhibited to me. There is some peculiarity in every one's writing, which enables a person to identify it; and, it is next to impossible, to get rid of that peculiarity, when the attempt is made to disguise it.

Mr. Sohier. — We understood the Court to rule, that the witness was to point out the similarity between the writing shown to him, and the defendant's.

Chief Justice. — He has not gone beyond that point.

Mr. Gould, resumes. — I should be very glad to answer, only yes, or no. But I can only point out those similarities of handwriting, inquired of, in my own way.

Every man who undertakes to disguise his hand, must do it, either by *carelessness*, or by *carefulness*; by *carelessly* letting his hand play entirely loose, as in mere flourishing; or, by *carefully* guarding every stroke which he makes, in order to prevent its being seen to be his. In this latter mode, it is next to impossible, for any person to continue his observation for any great length of time, or through any considerable amount of writing, without making some of those letters, which are peculiar to himself, or making them, in that peculiar manner, which he has been accustomed to. Frequently, these will consist of only a single particle, or character, but which will yet furnish a key, for detection of the real writer.

Now, in this letter, I find three letters, which are entirely different from Professor Webster's common mode of writing them; or, rather, two letters, and a character; viz. — the small letter, *a*; the small *r*; and the character, &, which he almost uniformly makes in one peculiar manner, and which he almost always uses, in lieu of the written word. In all the other letters, there is nothing dissimilar from his usual style of writing.

Of those most similar, I should instance, in the first place, the capital *I*. I can tell better, in what the similarity consists, by comparing it with a genuine "I," of his, in some

other specimen. I have already examined, and acquainted myself, with the specimens put into the case ; they having been submitted to me, some time since, for examination.

[No objection being made, the letter addressed to Ralph Smith, that addressed to his daughter Marianne, the duplicate memorandum found in his wallet, and the check given to Mr. Henchman, already in the case, were here submitted to the witness, as criteria of comparison. Another letter, addressed to Marshal Tukey, not in the case, and written a few days before the arrest, in relation to some loss of property by one of the defendant's domestics, was also conceded by the counsel for the defence, to be in his handwriting, and its introduction, for the same purpose, not objected to. The signatures to the checks drawn on the Charles River Bank, and produced by the cashier, were also handed to the witness, in the same connexion.]

Mr. Gould, resumes. — I find a similarity in the capital *I*, which can hardly be mistaken. All the small letters, which seem to me similar, may not look, to the eyes of others, just as they do to mine. Yet, I can detect similarities, which may escape the eye of another, just as a naturalist can see peculiarities in a shell, which would escape my observation. The capital *P's* are similar. So are the capital *D's*.

My practice in comparing handwriting, is, to look first, to see how many letters are similar, then, how many are dissimilar.

More than one-half of the capitals, here, are made on the same mark. That is, the pen is carried up again on the same stroke. This is so, for instance, in the capital *B's*. Though the letters differ in finish, or drapery, the plan of their formation is the same. I next examine the words. The form of whole words, in writing, is fixed in the mind, before writing them, just as a single letter is ; and when written, they may have a character of their own, just as much as single letters. Many of the short words, I can instance thus, which correspond. The figures 1, 3, 4, and 9, are, all, exactly alike. The *f's* are, all, exactly similar ; — never made with a loop at the top, but at the bottom. The abbreviation, *Nov*, for *November*, is alike, in all the specimens shown to me. So are the words, *from, was, all, if, his, Boston ;* in this latter word, however, the capital *B* is not always made the same, on the first stroke. The letter *Y*, is always written as a capital, above the line ; not made so well, as his other letters.

In my own mind, I have no doubt, that *this* ["Civis"] letter was written by the defendant.

[The letter signed, "Capt of The Darts," or, the "Dart" letter, as it was called, for the occasion, was next handed to the witness: — the first letter, produced by Mr. Tukey, in the yellow envelope, post-marked, "Boston, Nov. 26th."]

I have, in this, an entirely different hand from the last. At first sight, it looks as though it were written by a boy; but, on close examination, it shows marks of having been written, by one used to the pen. The top part of the *T*, and the *F*, on the outside, is made, in some respects, very differently from his usual habit: but the direction of the letters is the same. I find some slight difference in the capital *D*. The two *y's*, in *you*, and *yours*, are similar: so is the *w*, in *will*. Dr. Webster almost universally leaves the small *a* open at the top, in his genuine writing. It is so, here. In the words, *Francis*, and *Marshal*, on the envelope, the *a* has been connected together at the top, afterwards. I should think, that the envelope, and the body of the letter, were written by the same hand.

[The attention of the witness was now called to an address, written on the inside of the envelope of the Dart letter, to "Francis Tukey," which had been erased by a heavy dash, similar to those on the face of the promissory notes. The envelope itself, had apparently been turned, and the inside made the exterior.]

The name, on the inside, I should say, also, is in the same handwriting. As to the erasure, it could not have been made with the finger, when the ink of the writing was not dry, as the mark would have been larger, or the ink would have been left thicker, at the end, than at the beginning; whereas, the dash is now quite uniform. The letters underneath the dash, also bear the mark of having dried, before the dash was made across them. I think, that the letter and the envelope are both in the defendant's handwriting, and that they were both written with a pen.

[The East Cambridge letter was next submitted to the witness; of which a fac-simile will be found in the accompanying engraving.]

Mr. Gould. — I have examined this letter before. I have no doubt that the characters, or whatever else they are to be called, were made by the same hand, that wrote the letters, submitted to me as specimens.

In this case, very little can be determined from the letters: but many words strike my mind, from their resemblance. The word *was*, occurs two or three times, and resembles his mode of writing it. The words *the*, *if*, and capital *E*; *w* in

watch, on the second page, and the syllables *be*, and *but*, are, all, very similar to his. The word *Boston*, on the outside, is also very striking in its resemblance.

This letter was not written with a pen; I speak positively, as it *could not* have been. It was done with something soft; the top of the letters shows this. It could not have been done with a brush, for a brush does not begin a stroke in that way. Nor could it have been done with a pen; as there is no appearance of any harder pressure in one place than another. There are, at the top of the letters, some marks of very fine fibres, finer than any hair. This is particularly noticeable in the top of the letter *i*, in the second line of the second page, which should have been a capital, and which has no dot over it.

Mr. Bemis, to Mr. Gould. — You have seen this instrument before. — [Exhibiting to him the cotton-pen, produced by officer Fuller, consisting of a small pine stick, a quarter of an inch in diameter, and six inches long, and having wound round its lower end, a small wad of cotton, tied on with a string.] — Are you able to state, whether that erasure, on the inside, was made with this instrument; or how it was made?

Chief Justice. — The evidence seems questionable.

Attorney General. — We suppose it competent for the witness, to express an opinion, if he has made trial of the instrument and found it to produce a similar mark: as much so, as if some novel instrument had been found upon the prisoner's premises, of which no duplicate could be shown to exist, and which, on its face, connected itself with the erasure, or writing, as its necessary cause.

Chief Justice. — The supposed case, is quite a different one from the present.

Attorney General. — Our proposition, may it please the Court, is this: — We find in the possession of the defendant, an instrument. Whether it is novel or peculiar, the principle seems to be the same. If it must have been the necessary cause of the mark, its importance as evidence cannot be questioned. The relative connection between the instrument, and the mark made by it, may be a matter of degrees; and, though not absolute, or necessary, may properly be submitted to the judgment of the jury.

My associate suggests this illustration. Suppose that a metallic type, of a peculiar character, had been found in Dr. Webster's rooms; and that there was no similar type to be found elsewhere; and that a document, relating to Dr. Parkman's disappearance, was produced here, in regard to which,

the question was, whether it had not been made by that instrument. Would it not be a proper case for the opinion of an expert? Would it not be competent, at least, to show, that the instrument must have been used with the prisoner's knowledge?

Mr. Merrick. — I understand, that the attempt is, to show that this witness has made experiments with this instrument, and that he has made a mark with it, similar to that inside of the envelope; and that, from this, he is expected to testify, that the erasure, or other writing, has been made with the instrument. We submit, that it is not competent.

Chief Justice — (after conference of the Court.) — We think the witness's opinion, quite inadmissible. The fact, that such an instrument has been found, has already been proved; but opinion, as to its possible use, would be liable to great objection.

[The two promissory notes were handed to the witness; and he was asked, in whose handwriting, were certain words on them, which the witness more fully particularizes in his answer.]

Witness resumes. — The two words, *paid*, written across the face of the large note, (for $2,432,) are in the defendant's handwriting. So is the memorandum on the back of the $400 note, in pencil, 483 64, *bal. pd. Nov. 22d, '47.* The erasures, or dashes, on the face of the two notes, and over the signatures, could not have been made with a pen, or with anything that had a point to it; they have none of the characteristics of penmanship about them. There are the same indications of the tracing of some fibrous substance in the ink, as in the East Cambridge letter.

[The Cunningham account, and the two small memoranda taken from the prisoner's person, were next submitted to the witness.] The words, *Bal. due Dr. P.,* and the figures following, on the bottom of the account shown to me, were made by the defendant; as also the caption, or superscription, on the top of the back of the account, beginning, *C. Cunningham,* &c. The small memoranda of the separate words, *axe,* &c., and the figures in pencil, 483 64, are also his.

Cross-examined, by Mr. Sohier. — I have seen the specimens of writing, submitted to me, to-day, before; and have spent some time in examining them. I have also examined other anonymous letters, — addressed, nearly all, to Mr. Tukey. The letter addressed to Mr. Tukey, under the Doctor's own hand, I should say, was in his ordinary handwriting, though evidently written in haste. The "Civis"

letter is written in a somewhat smaller, and rounder hand; not very much disguised, I should say. If the letter were shown to me as a whole, I should not say, that it was written in a disguised hand. It is impossible for me to say, whether he *intended* to disguise it, or not. Most of it is like his ordinary writing: all, except the dissimilarities which I have pointed out. I observed three letters in the "Civis" letter, which I pronounced dissimilar; I can't say, whether these dissimilar-looking letters are always written alike. His *a's*, here, are all closed. I do n't remember seeing them so, in any other of his writing. The *d's* are turned peculiarly, at the end of a word. His *R* is made without a hook, as we call it: sometimes, it looks like a *K*. I do n't remember his omitting it, in his ordinary writing. He here makes his character for an *&*, in a scholar-like fashion; generally, he makes it very small, and indistinct.

I mean to say, that, at first sight, on a general observation, the handwriting of this ("Civis") letter, does not appear to be disguised. Without something in the letters being very unaccountably formed, I do not pretend to say that any hand is disguised. I say it, with reference to something that is genuine. I have compared these specimens, in regard to which the question is made, with various handwritings; that of my own family, for instance. When examined closely, the writing of this "Civis" letter, is not exactly like Dr. Webster's: but it struck me as his, at first sight.

The "Dart" letter has no general resemblance to the defendant's writing. The small *t* has a peculiar mark; the *o's* are made similar: so are the *r's*, and the *a's*, at first; but towards the last, they are closed. The *w's*, and *s's*, are like his. The latter have no dot at the bottom, and are pointed at the top. I should call the whole, an unnatural hand. I think it a disguised hand, and Dr. Webster's, from the letters which I have instanced.

As to the East Cambridge letter, as I have said before, I should not call it, *writing*, at all. I mentioned the word *was*, as resembling Dr. Webster's writing. So the letter *w*, in *watch*, and the words, *the*, *but*, and *Boston*, resemble his. My own opinion is positive, that it was written by Dr. Webster. As a whole, and taking the peculiarities pointed out, I mean to say, that it is just such a letter as Dr. Webster would write, by using such an instrument as it must have been written with.

To the Chief Justice. — My opinion, is, that it is the same handwriting with the "Dart" and "Civis" letters.

To Mr. Sohier, again. — I should not think, that any person could write a disguised hand, twice, alike. I do not base my opinion, as to this East Cambridge letter, upon (what I consider,) the other disguised letters of the defendant's. I have been called, a dozen times, perhaps, to give an opinion upon writing, not written with a pen, but supposed to have been written with a stick.

GEORGE G. SMITH, *sworn, — examined by Mr. Bemis.* I am an engraver. In the course of my business, I have been obliged to acquaint myself with penmanship, especially for the purpose of engraving fac-similes of handwriting. I have been called, frequently, to give an opinion of handwriting, as an expert, in court.

I am acquainted with the defendant's signature, from seeing it appended to the medical diplomas. I have also received notes from him, in former years.

[The "Civis," "Dart," and "East Cambridge" letters, were here exhibited to the witness, together with the other genuine specimens of handwriting, submitted to Mr. Gould.]

I have seen and examined these letters, before; together with all the specimens of genuine handwriting in the case, except the letter addressed to Miss Webster.

In regard to the "Civis" letter, I am compelled to say, from the attention which I have given to the subject, that it is in Professor Webster's handwriting. I am very sorry to say, that I feel quite confident of this.

In regard to the "Dart" letter, I find certain peculiarities, which resemble Dr. Webster's writing; but I am not prepared to express, in this case, the same degree of confidence, as in the other. I should think that it might be his, but cannot speak of it with any great degree of confidence. I have no doubt, but that the envelope and interior were written by the same hand. The erasure looks, to me, as if a part of it might have been made with the finger, when the ink was wet, and a part with something else; though not with a pen.

Of the East Cambridge letter, I should only speak with the same degree of confidence, as of the last. I find certain peculiarities in it, which resemble Dr. Webster's writing, but they are not such, as to render the matter entirely conclusive, to my mind. I should say, that it was not written with a pen, or a brush. It looks as if made with some soft instrument, from the peculiar appearance of the shading. If done with a pen, the shade would have been deeper. I think, that I can discover marks of fibres.

[The pencil memorandum on the Cunningham account, as also on the $400 note, and the two small memoranda from the wallet, were exhibited to the witness. The counsel for the defence stated, that they should make no denial of either of these being the prisoner's.]

Mr. Smith, resumes. — The erasures on the notes, could not have been made with a pen; at least, any ordinary pen; but must have been made with some soft substance. I can discover traces of some fibrous substance upon them. — [Applying to them a microscope, which was afterwards handed to the jury.] I have examined quite a number of specimens of Dr. Webster's handwriting, and consider myself acquainted with it.

Cross-examined by Mr. Sohier. — The erasures on the notes could not have been made with a pen; unless, possibly, with a pen which had been soaked very soft. [Mr. Sohier hands to the witness some strokes, or dashes, which he had made with the back of a steel pen.] There is a material difference in the two. In those now shown to me, there is wanting that softened shade at the termination of the strokes, and those fibrous marks, which are visible in the others. It is possible, that if the ink had cotton in it, that might account for the fibrous appearance.

The most important peculiarities in the "Civis" letter, which I have noticed, are, — the small *d*, at the end of a word, which he writes differently from the same letter in the middle of a word: at the end of a word, it generally resembles his; but rarely so, at the beginning or middle of one. — There is also a peculiarity about the character, &, which it is difficult to define, but which I consider important: he sometimes writes the word in full, sometimes uses the character. *Here* is one, [pointed out by the witness,] which it evidently seems to me, he began to make in his usual way, and then altered. — The letter *a*, also, is made in an unusual manner. It is separated from the preceding letter, and joined to the succeeding.

I think, that there is an attempt to disguise his hand, in this letter, in several particulars. I cannot specify which letter is the most disguised, without going a great deal into minutiæ, and taking a great deal of time. I should not say, on the whole, that it was very much disguised; else, I should not be so confident in my opinion, that it is his. I should say, that it has two airs about it; a disguised air, and an air of similarity.

I don't know, that I have omitted any reasons for the opinion, which I have formed and stated; but if I were per-

mitted to refer to my memoranda, and took more time, I could go more into detail.

[The three letters to Marshal Tukey, were now read by Mr. Bemis, and put into the case. Of the East Cambridge letter, a *fac-simile* is subjoined. The two others are as follows: —]

[That, inclosed in the yellow envelope, post-marked, "Boston, Nov. 26th," was directed, on the outside, to—]

FRANCIS TUKEY,
CITY MARSHALL, [and read, on the inside —]

Dear Sir,

You will find Dr. Parkman Murdered on brooklyn heights.

Yours truly,

M.——, 'CAPT OF THE DARTS.

[The "Civis" letter bore the address, "Mr. Francis Tukey, City Marshal, Boston, Mass.;" and the post-mark, "Boston, Nov. 30th." It was not inclosed in an envelope, like the other two. Its contents were as follows:]

Boston, Nov'r 31, '49.

MR. TUKEY,

Dear Sir,

I have been considerably interested in the recent affair of Dr. Parkman, and I think I can recommend means, the adoption of which, might result in bringing to light, some of the mysteries connected with the disappearance of the aforementioned gentleman.

In the first place, with regard to the searching of houses, &c., I would recommend, that particular attention be paid to the appearance of cellar-floors; do they present the appearance, of having been recently dug into and covered up again; or, might not the part of the cellar, where he was buried, have been covered by the piling of wood?

Secondly, have the out-houses and necessaries been carefully examined; have they been raked sufficiently?

Probably, his body was cut up and placed in a stout bag, containing heavy weights, and thrown off one of the bridges, — perhaps, Cragie's. And, I would recommend the firing of cannon, from some of these bridges, and from various parts of the harbor and river, in order to cause the body to rise to the

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surface of the water. This, I think, will be the last resort, and it should be done effectually.

And, I recommend, that the cellars of the houses in East Cambridge be examined.

Yours respectfully,

CIVIS.

[Mr. Bemis here stated, that the prosecution would call a single additional witness, of whose testimony they had only recently been apprised, and who had arrived in town from the interior of the State, since last night's adjournment.

The Chief Justice having directed that he should be sworn, the witness took the stand.]

FISHER A. BOSWORTH, *sworn, — examined by Mr. Bemis.* I am a physician; now, a resident of Grafton, in Worcester county, in this State.

I attended the medical lectures, at the Medical College, in Boston, during the winters of 1847 and 1848. I knew Dr. George Parkman, and, also, Mr. Littlefield, the janitor of the College.

I had occasion to call at the Medical College, in Grove street, on the 23d day of last November, to see a medical student. It was between half-past one and two o'clock, of the day, and nearer two. I approached the College, through Fruit-street Place, and went up the east steps to the front door. I found the door a-jar; and, looking in, concluded, from the position of the door, that the lectures were not over. I immediately passed out, down the west flight of stairs, towards the dissecting-room entry, thinking that I would not go in to disturb the lecture. As I passed the foot of the stairs, I met Dr. Parkman coming round the corner of the steps, very fast, on his way up to the front door. I came directly against him; and, as I passed farther on, I turned my head, and saw him nearly at the top of the stairs.

I came on, upon my way up to Court street, and did an errand; and, at about three o'clock in the afternoon, went back again to the Medical College. I rang the front door-bell, and, in three or four minutes, Mr. Littlefield made his appearance. I recognized him, and spoke to him; I inquired, if Mr. Coffrain, the student whom I wished to see, was there. He replied, that he did not know him; but, that, if he were there, he was probably in the dissecting-room. He asked me, if I would not go into the dissecting-room, myself, to see him, as he was busy; and I consented, and went and found Mr. Coffrain there.

Mr. Littlefield came to the door, in his usual working-dress, such as I used to see him wear, when at work about the College.

I fix the day when this occurred, from my borrowing some money, on the 21st of that month, for which I gave my note on four months. The next day, the 22d, I came to Boston, but was too unwell to go about. But the next day, the 23d, after taking my dinner at a friend's house, in Cottage Place, far up the "Neck," towards Roxbury, I started to walk down towards the College. We dined at half-past twelve, and after dinner, which I ate with convenient despatch, I walked directly to the College.

I stayed in the dissecting-room entry, talking with Mr. Coffrain, some ten minutes, I should think. The next day, Saturday, I was over at my brother's, in South Boston, the Rev. Mr. Bosworth; and, in the afternoon of that day, I first heard of Dr. Parkman's disappearance. I heard a gentleman speak of it, in the Worcester Railroad depot, as I was going to take the cars for Grafton. I also saw the notice, myself, in an evening newspaper. I called to mind, then, the circumstance of having met Dr. Parkman, at the College, the afternoon before, and mentioned it in the depot.

I was first apprised, yesterday, at about eleven o'clock, at my house, in Grafton, that my testimony might be wanted, here, in Court.

No cross-examination.

The Attorney General now stated, that the direct evidence for the prosecution was all in, and that the Government would here rest their case.

It being a quarter to two, P. M., the Court adjourned to half-past three.

Afternoon Session. — Wednesday, March 27th.

The Court came in, at half-past three o'clock, pursuant to adjournment.

Mr. Sohier rose, and opened on behalf of the defence, as follows: —

May it please Your Honors,
and, Gentlemen of the Jury: —

I am aware, that it is usual, — that it may perhaps be considered imperative upon counsel, in a cause like this, — to

call the attention of the jury, to the situation of their client; and to comment, in strong and nervous language, upon the importance, the vast importance, of the interests which that client has at stake. But I shall not do it: — I cannot do it.

I fear much, Gentlemen, that were I to permit my attention to wander from the cause to the party, from the record to the dock, I might be lost. I might see nothing, but the man, — who, for more than a quarter of a century, has been a respected professor in that University, which is the pride of our State, and a respected lecturer in that College, which is one of the boasts of our city; — the man, under whose instruction, numbers now present, (myself, among the rest,) were educated; — whose memory, whose very form and features, are associated with many pleasant recollections; — I might see nothing but him, — struggling for his life, struggling to avert infamy from himself, and from his children, — in that same dock, where we have been accustomed to see, felon after felon, abide the judgment of the law. I might think of these things, gentlemen, and I might forget the case.

I must, therefore, rather follow, — though it needs must be, at a long and humble distance, — in the footsteps of the learned and eloquent counsel, who has addressed you on behalf of the Government, and call your attention to our duties; to our relative situations, and relative responsibilities; to the cause; the rules of law, applicable to the charges involved in it; and the rules of evidence, applicable to its long details of circumstantial testimony.

We are here, as he has told you, in the discharge of our various duties, as officers and ministers of the law, to discuss and determine the *one* great question, which, for months, has absorbed the attention, and agitated to their very lowest depths, the feelings of a great community: to wit. — Is the life of Professor Webster forfeited? Is it forfeited to the laws of his country, because it has been proved here, beyond all reasonable doubt, that he has committed one of the most horrible of offences, which can be found enumerated, even on the law's dark catalogue of crime?

A serious duty, is this, which has devolved upon all of us; upon you, who are his Judges; upon us, who are his counsel, and who represent him, in this more than mortal struggle.

Upon you, it devolves to say, whether Professor Webster shall go hence to his family, and there remain, — what he has ever been to them, — the very centre of their purest and holiest affections, — the very object of their idolatry: — or, whether he shall go hence to the scaffold, leaving to that family, a name,

which, if they could, they would bury in the grave with him; —a name, to be ever deemed by them, their great, though their only disgrace. Yes, gentlemen, it devolves upon you to say, whether the fire upon his hearth-stone shall henceforth burn brightly, and its light be shed on happy faces, beaming kindly upon his; or whether your breath, Mr. Foreman, when you pronounce the verdict, shall extinguish that fire, scattering its ashes to the winds, and causing its very place to be forgotten; — in kindness by friends, in mercy even, by enemies. This duty devolves upon you; and, under the responsibility of your oaths. If you err, you see the victim. He, it is, and his, is the family, who must be offered up as a sacrifice to that error; unless, indeed, you err on mercy's side; — on the side of that quality, wherein it is permitted man to approach nearer, than in any other, to the nature of his God. There, you may err, and err in safety; and, no prisoner's groan, no widow's sob, no orphan's tear, bear witness to your error. Herein, and herein, only, is your lot happier than ours. If *we* err, we must answer it to the prisoner and his friends, to an exacting and scrutinizing profession, and to our consciences.

Engaged, then, as we are, in one and the same duty, to wit.; — in examining, discussing, and determining this one great question, — it behooves us to stand in no antagonistic position; but, on the contrary, so far as in us lies, to aid and assist each other. Ill, would it become counsel, to endeavor to obtain a verdict by management and chicane; and ill, would it become you, to permit this prisoner to suffer by any error of ours. No; it is your duty, your privilege, to constitute yourselves the counsel of this defendant; — to this extent, at least; — to see, that he has the benefit of every ground of defence, which may suggest itself to your minds, whether his counsel assume those grounds, or not: — and I pray you to remember, and never, for a moment, forget, that, in the words of your oath, "you have this prisoner in your charge," — nay, more, the happiness and reputation of his children, also.

And here, I must request your leave to make a few remarks upon a subject, on which, in a less important case, or on a less momentous occasion, I certainly would not address men like you. But, in the name of this defendant, and of all that he holds dear, I must intreat you, to commence the examination of this case by examining your own minds; and that you do so, with a stern determination to eradicate everything which partakes of prejudice, or savors aught of suspicion. I have not forgotten, — I remember well, — that,

before you took your oaths of office, in virtue of which the law has confided to you this great trust, — the life of the prisoner, — you did, each of you, declare, that you were not sensible of any prejudice or bias. But can you say so, now? — now, that you and we stand at the end of this long array of evidence, which the Government, for one whole week, has been bringing up against us? Are you sure, that you could ever say, with certainty, that you were free from prejudice? What safety is there in the mere fact, that you were not sensible of it? Why, it is the very quality and essence of prejudice, to lurk unseen within the mind of man; blinding his perceptive powers, perverting his reasoning faculties, and distorting his judgment; so that the very source to which we look for safety and protection becomes a source of danger and error. No! Gentlemen; there is no safety in the fact, that a man is not sensible of prejudice; he must search his mind diligently, in order to find and discard it. If prejudice exists but in a single mind upon your panel, there is no safety; for prejudice is contagious; it flies from mind to mind; it is communicated by the glance of the eye, by the intonation of the voice.

Now, speaking in all frankness, I do not hesitate to say, that I cannot persuade myself, that every mind upon your panel was absolutely free from prejudice, when you took your seats to try this cause: — by no means! Am I to forget, or, to suppose that you have forgotten, the excitement, which existed in this city, when it was first bruited abroad, that George Parkman was missing? — How men quitted their avocations? — How they clustered together on the exchange, in the work-shops, at the corners of the streets, in the porches of the church? and that their talk was on this one mysterious subject? Can you, or I, forget, if we would, that burst of indignation, — so creditable to the community, but so dangerous to the defendant, — which took place, when it was announced, that George Parkman's body had been found in the laboratory of the Medical College; and which threatened, not only the defendant, but the safety of the harmless College, itself? These are not things to be forgotten; they are burned into our memories; we cannot forget them, if we would. Are we to assume it as a fact, under these circumstances, that there can be no prejudice? By no means. And therefore it is, that I call upon you now, — now, when the Government's evidence is fresh in your minds, — to remember your duty to the prisoner, and to examine his case, as free as possible from every taint of prejudice.

I have thought, that, in opening this cause, I could

best diminish the labors of my associate, if, instead of stating to you, minutely, and in detail, the facts and circumstances which we expect to prove in the defence, I should call your attention —

First, To the rules of law, descriptive of the offence charged. —

Secondly, To the rules of law, prescribing the manner in which the offence shall be charged; that is, to the indictment. —

Thirdly, To the rules, declaratory of what the Government must do, to be entitled to a verdict. —

Fourthly, To the nature of the testimony introduced by the Government, and to the rules of evidence applicable to that kind of testimony. —

And, *Lastly*, To the evidence, or rather to the heads of the evidence, (scheduled together with great brevity,) which we intend to introduce; and which, when taken in connection with such facts as you shall deem proved by the Government's testimony, will constitute the entire mass of evidence on which you will eventually have to pass. I therefore ask your attention to these subjects, in the order in which I have named them.

I. As to the rules descriptive of the offence charged. — Every killing of a human being is called a homicide, this word being sufficiently extensive in its signification, to cover every act of killing a human being, under any and all possible circumstances. And this act of killing, or homicide, is divided, almost as a matter of course, into two general divisions. —

That which is criminal, and, therefore, punishable. —

That which is not criminal, and, consequently, not punishable.

Criminal homicide, with which, alone, we have anything to do, is subdivided into two parts: —

Murder, which is punished capitally by the death of the offender; and, —

Manslaughter, which is punished severely, ignominiously, — but still, not with death.

The indictment, in this case, is technically called an indictment for murder; but, inasmuch as the jury have the right, upon the trial of every indictment of this kind, to convict of murder, or to convict of manslaughter, as they deem proper, the defendant stands as though he were indicted twice; once for murder, and once for manslaughter. It becomes necessary, therefore, that I explain to you, what it is that constitutes each of these offences.

Murder is defined to be "the killing of any person with malice prepense, or aforethought, either express, or implied by law." This definition, however, will give you no idea at all of what murder is, unless you understand the legal meaning attached to the word "malice," embraced in its terms.

Malice is divided, by all criminal writers, into two heads: First, express malice: — Second, implied malice, or, malice implied by law.

In the phrase, express malice, the word is used in its common, out-door, every-day signification, to denote a feeling of revenge; a wicked, rancorous determination, which induces a man to do a wrongful act. Speaking of this kind of malice, as it is said to exist in homicide, the books say, — and I read from 1 Russell on Crimes, p. 482, (last Am. ed.) —

"Express malice is, when one person kills another with a sedate, deliberate purpose, and formed design; such formed design being evidenced by external circumstances, discovering the inward intention; as, lying in wait, antecedent menaces, former grudges, and concerted schemes to do the party some bodily harm."

This is easily understood, and need not be dwelt upon at the bar.

We come next to the phrase, "implied malice," or, "malice implied by law." Here, the meaning of the word is more difficult to explain. You must remember, that, (in theory, at least,) the law punishes, not so much the overt act of crime, as the wicked and depraved mind which prompted to that overt act. But how is the law to fathom the mind of man? How is it to dive into its deep recesses, and bring to light its latent malice and its dark depravity? It cannot do so; therefore it undertakes to judge of a man's mind by his acts; considering them to be the fruit of the mind, the law undertakes to know the mind by its fruits. The law virtually says, If a man commit a certain act, under certain circumstances, or in a certain manner, I shall take it for granted, that he was prompted to it by malice, unless, in the investigation of facts, other circumstances are found to exist, which will warrant the conclusion, that he did not act from malice. Now the law declares what these particular acts, or classes of acts, are, from which it assumes, *implies*, the existence of malice in the mind; and, therefore, if a juror would know, whether what is called implied malice, exists in a case which he has under consideration, he must ascertain what the acts, or classes of acts, are, from which, in such a case, the law assumes the existence of malice. Then, if he is satisfied,

beyond reasonable doubt, that such acts have been committed, he will be warranted in finding that they were instigated by malice; — in other words, in finding the existence of malice. Let us ascertain, then, what the acts are, which, in the eye of the law, prove the existence of malice in a case of homicide, such being the case you have before you.

This is easily done by referring to the books; and I read, from 1 Russell on Crimes, (same ed.,) p. 483. "Malice is implied, by law, from any deliberate, cruel act, committed by one person against another, however sudden. Thus, where a man kills another suddenly, without any, or without a considerable provocation, the law implies malice; for no person, unless of an abandoned heart, would be guilty of such an act, upon a slight, or no apparent cause."

Murder, from implied malice, then, is where a homicide is committed by a *deliberate, cruel* act, without *any*, or, *considerable provocation.*

I beg you to keep this definition carefully in view, and by so doing, you will the more easily understand the legal meaning of the term Manslaughter, which I am now about to explain.

Manslaughter, for the purposes of this argument, may be called the very reverse of murder by implied malice. The best definition of manslaughter is given in 1 East's Pleas of the Crown, p. 232, from which I read. "When death ensues from sudden transport of passion, or heat of blood, if on reasonable provocation and without malice," (that is, express malice,) "or upon sudden combat, it will be manslaughter." I say, the reverse of murder by express malice, for that, as you well remember, is *deliberate*, without *any*, or *considerable*, provocation. This is not deliberate, but in heat of blood; not *without*, but *with* provocation, or in sudden combat: that is, if the blood of the perpetrator was, at the time of the commission of the homicide, heated by provocation, or heated in a mutual combat, he is deemed to have committed a manslaughter.

It is your duty to keep this line of demarcation between these two offences distinct in your memories; for, on one side of this narrow line is death, on the other, life; — life, it may be, burdened with long and severe imprisonment, — but still life, which is clung to; — life, which is always lighted by Hope, that great friend of our nature, the last friend which ever deserts us.

Thus much for murder with implied malice; and thus much for a *general* definition of manslaughter.

But it is necessary to go further in our inquiries touching the

definition of manslaughter; for, as it depends entirely on heat of blood, produced either by provocation, or by combat, we must know what the law considers such a reasonable provocation, as will reduce a homicide to manslaughter; and what is meant by mutual combat.

In considering what provocation is reasonable, the law always regards the weapon, or instrument, with which the homicide is committed; for, as you will see at once, the provocation which might palliate a blow with one instrument, might be very insufficient to excuse it, if given with another. The provocation, which would palliate a blow with a slight stick, might be very insufficient to excuse one with an iron bar. Now, the weapons, or instruments, by which death is produced, may fairly be classed under two heads, to wit: — First, those which are deadly, or calculated to do great bodily harm: — Secondly, those which are not so. Let us inquire then, what provocation is deemed reasonable, to reduce a homicide to manslaughter, when a deadly weapon is used.

I answer this inquiry, from 1 East P. C. 233, ch. 5, § 20: —

"Any assault, made with violence or circumstances of indignity, upon a man's person, if it be resented immediately by the death of the aggressor, and if it appear that the party acted in heat of blood upon that provocation, will reduce the offence to manslaughter."

In this connection, and to illustrate this position, I will read, from the same page in East, the abstract of *Lanure's case.*

"A. was riding on the road, and B. whipped his horse out of the track, and then A. alighted and killed B. That was held manslaughter, because the rider was considered as having reasonable provocation."

I will also read *Taylor's case*, from the 26th section of the same chapter: —

"Three Scotch soldiers were drinking together, in a public house; some strangers in another box, abused the Scotch nation, and used several provoking expressions towards the soldiers; on which, one of them, the prisoner, struck one of the strangers with a small rattan cane, not bigger than a man's little finger. The stranger went out for assistance; and, in the mean time, an altercation ensued between the prisoner and the deceased, who then came into the room, and who, on the prisoner's offering to go without paying his reckoning, laid hold of him by the collar, and threw him against a settle. The altercation increased; and when the soldier had paid the reckoning, the deceased again collared him, and shoved him

from the room into the passage. Upon this, the soldier exclaimed, that he did not mind killing an Englishman, more than eating a mess of crowdy. The deceased, assisted by another person, then violently pushed the soldier out of the house; whereupon, the latter instantly turned round, drew his sword, and stabbed the deceased to the heart. Adjudged manslaughter."

Here, you perceive, an assault was made on the person of Taylor, to put him out of the house; and in the heat of blood occasioned by this assault, he killed his opponent with a deadly weapon.

I state these cases, to illustrate the position, that an assault on a man's person, is considered such a provocation as will reduce the killing with a deadly weapon, to manslaughter.

The next inquiry, is, What is considered a sufficient provocation, to reduce a homicide to manslaughter, when it is committed with an instrument not deadly, or likely to produce death?

The whole doctrine on this subject, is summed up in East; and I now read from the same section, ch. 5, sec. 20: "Words of reproach, how grievous soever, are not provocation sufficient to free the party killing, from the guilt of murder; nor are contemptuous or insulting actions, or gestures, without an assault upon the person; nor is any trespass against lands, or goods. This rule governs every case, where the party killing upon such provocation, made use of a deadly weapon, or otherwise manifested an intention to kill, or to do some great bodily harm. But if he had given the other a box on the ear, or had struck him with a stick, or other weapon *not likely to kill*, and had unluckily, and against his intention, killed him, it had been but manslaughter."

These authorities answer our question touching provocation; and answer it thus: If the weapon, which inflicts the mortal wound, is a deadly one, the provocation must be, at least, an assault on a man's person; if, however, such weapon is not a deadly weapon, words may constitute a sufficient provocation.

Let us next inquire, What is a "sudden combat?"—or, in other words, In what kind, degree, and nature of combat, must the blood have become heated, so that a homicide committed in such heat of blood, is, in the eye of the law, reduced to manslaughter?

I will answer, by reading from the same book, sec. 24, of the same chapter. "Where, upon words of reproach, or, indeed, any other sudden provocation, the parties come

to blows, and a combat ensues, no undue advantage being taken or sought on either side; if death ensue, this amounts to manslaughter. And here, it matters not what the cause be, whether real or imagined, or who draws or strikes first; provided the occasion be sudden."

It is thus, Gentlemen: If two persons get into what is called a combat, — no matter which begins it, — and then, being heated by the combat, one kills the other, the law considers the frailty of human nature, and, under such circumstances, the offence is reduced from murder to manslaughter. An example is given. "A. uses provoking language, or behavior, towards B., who thereupon strikes him, and a combat ensues, wherein A. is killed; held manslaughter; for it was a sudden affray, and they fought upon equal terms." — East, P. C. ch. 5, § 25.

By the words, "they fought on equal terms," you are not to understand, that they must be on equal terms at the moment the homicide is committed; it is sufficient, that the parties are on equal terms when the combat commences; if a combat should commence with the fist, and after the blood of the parties has become heated by the combat, one should seize a weapon, and destroy his opponent, it would be manslaughter. "The case," (says Mr. East, ch. 5, § 26,) "will not be varied, if, on any sudden quarrel, blows pass, without any intention to kill, or injure another materially; and in the course of the scuffle, after the parties are heated by the contest, one kill the other with a deadly weapon."

Whiteley's case, which I cite from 1 Lewin's Reports, page 176, illustrates this position concerning mutual combat, still further. Mr. Justice Bayley uses this language: "If persons meet originally on fair terms, and, after an interval, blows having been given, a party draws, in the heat of blood, a deadly instrument, and inflicts a deadly injury, it is manslaughter only."

I have said thus much, to point out to you the distinction between murder, with implied malice, and manslaughter; and, with your leave, I will briefly recapitulate my positions.

Murder, with implied malice, is a deliberate act, without any legal provocation.

Manslaughter, is a sudden act, in heat of blood, on legal provocation, or in mutual combat.

Legal provocation, may consist of an assault on a man's person, if the homicide is committed with a deadly weapon; or of words merely, if a weapon not deadly is used.

Sudden combat is any sudden contest between the parties,

without regard to which begins, or which is killed, if it commenced on equal terms, and gave rise to the heat of blood.

Malice, then, is to be judged of, in a great degree, by the manner in which, and by the weapon with which, the homicide is committed.

When, therefore, the Government charges Professor Webster with having murdered George Parkman, it says, in fact, either that he killed him of express malice, or that he killed him in a deliberate, cruel manner, without reasonable provocation. When it charges, that Professor Webster destroyed George Parkman by an act of manslaughter, as I have already stated it virtually does, it says, that he killed him in heat of blood on provocation, or in combat.

Thus much, Gentlemen, on the first head of my argument; to wit, the rules of law descriptive of the offence charged. I have dwelt longer, perhaps, than was necessary, on the definition of murder by implied malice; but I deem it essential, that you should bear in mind, throughout this investigation, that it is the manner of the death, the manner in which the homicide is committed, which creates this crime of murder by implied malice, and from which all the distinguishing lines are to be drawn, between such murder and manslaughter; and I wish this borne in mind during the consideration of the next head, to which I shall now ask your attention.

II. The rules of law, prescribing the manner in which the offence shall be charged; that is, the Indictment.

In examining any criminal case, it is always of the greatest importance, that the jury should pay the closest attention, not only to the crime charged, but also to the manner, and to the particulars, in which it is alleged to have been committed. For it is to the offence, in the manner and form, and in the particulars in which it is charged, that the prisoner is to answer, and to nothing else.

This rule is the great safeguard of every citizen. It matters not how many crimes a man may have committed, if he is not proved to have committed the particular one for which he stands charged. It matters not if he has committed the offence, generally, for which he is indicted, if he is not proved to have committed it in the manner and with the particulars which the indictment charges.

These rules, I say, are intended for the safety and protection of every citizen. If these rules are once deviated from, and a man tried for an offence not charged against him in the indictment, or for an offence committed in a different manner from that charged, who will be safe? Who is there, that may

not be surprised on his trial? Who is there, that can prepare for his defence? Hence it is, that the Constitution of our State provides, that no citizen "shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally, described to him." Not only must the charge be full, but it must also be plain; not only substantially made, but it must also be made formally. This is guarantied to every one, by the Constitution.

Let us, then, examine the indictment, and ascertain in what manner the offence is charged, and what are the alleged particulars thereof, to which Professor Webster is to answer.

The indictment contains four counts; that is, the alleged murder is set forth in four different modes:

1. That Professor Webster murdered George Parkman, by striking him with a knife.

2. That he murdered him, by striking him with a hammer.

3. That he murdered him, by striking him with his hands and feet, and by beating him against the floor.

4. That he murdered him in some way and manner, and by some means, instruments and weapons, to the grand jury unknown.

I ask the attention of the Court and jury, to some of the rules of law, which I conceive to be applicable to the three first of these counts.

It is an imperative rule, that, in an indictment for murder, the means of death shall be correctly stated; that is, on the trial, they must be proved as stated in the indictment. There are certain means, or classes of means, by which human life may be overcome, which are recognized by the law as separate, and distinct from each other: for instance, striking with a weapon; striking a man against an object; poisoning; strangling; burning; starving; and various others. Whichever kind of means the Government allege to be the means used to destroy life, that kind they must prove, beyond reasonable doubt. In this particular case, the Government, in the three counts under consideration, allege striking, as the means by which death was produced. In indictments, setting forth this particular means, as I call it, of death, it is usual for the Government to allege, that the striking was committed with some particular weapon. But it is not necessary that the Government should prove the striking to have been by the exact weapon alleged; proof of any weapon, which will produce death by striking, will sustain the allegation. For instance, if a man is indicted for murder, by striking with a hatchet, and the proof is, that he stabbed with a knife, it is

sufficient; — the means alleged being by striking, the kind of weapon is immaterial, provided it be one used in the manner alleged, to wit, by striking with it. So, too, if a man is indicted for killing another by stabbing with a knife, and the proof is, that he ran him through with a spit, or struck him with a stake, it is sufficient; the *striking* being the gist of the charge, inasmuch as it is the "means." But if the *means* be not proved, as laid in the indictment, or it appears that the murder was committed by other means, legally acknowledged to be different from the means alleged, the party must be acquitted, for the reason, that the Government must state the means correctly, that is, must prove the means to be such as the indictment alleges. And the law recognizes a *great many* distinct means, by which murder may be committed.

To illustrate this, I will cite 2 Hale's Pleas of the Crown, p. 185. "An indictment of murder or manslaughter hath these certainties or requisites to be added to it, more than other indictments. For it must not be only felonious, and ascertain the time of the act done, but must also declare how, and with what, it was done. Yet, if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poisoning, or strangling, *it doth not maintain the indictment upon evidence.*" And the first volume of the second part of Coke's Institutes is referred to, page 319. The same doctrine is laid down in Hawkins's Pleas of the Crown, book 2d, sec. 84, ch. 23.

To show the great strictness, required by the law, in this particular, I will cite further, may it please the Court, *Rex* v. *Kelly,* Moody's Crown Cases, page 113. In that case, the indictment charged the prisoner, with striking and beating the deceased with a piece of brick, held in his right hand, and thereby killing him. It appeared probable, upon the evidence, not, that the prisoner struck with the brick, but that he struck with his fist, and that the death of the deceased was occasioned by the fall upon the brick. So the jury found; and the Court were unanimously of opinion that the means of death were not truly stated: — also, *Rex* v. *Thompson*, Moody's Crown Cases, page 139, wherein it is decided, that, in an indictment for murder or manslaughter, when the cause of death is knocking down upon a stone, or other substance, and the mortal wound is from such substance, the statement should be accordingly; and a statement, that the prisoner struck and beat the deceased, upon the head, and there gave him divers mortal blows and bruises, of which mortal blows and bruises he died, is not sufficient:

—also, *Rex* v. *Martin*, 5 Car. & Payne, 128. In that case, the prisoner was indicted for the manslaughter of Ann Evans, and the indictment charged the wound to have been inflicted by a blow with a hammer. It was supposed that the prisoner struck the deceased with a hammer. A surgeon, who examined the deceased, testified that the injury might have been occasioned by her falling against the lock of the door. Mr. Justice Parke instructed the jury, that if they believed that the injury was occasioned by a fall against the door, though produced by the act of the prisoner, the indictment was not sustained.

These authorities are sufficient to show, that, if an indictment be for killing, by striking with a weapon, and the proof is, that the killing was by poisoning, strangling, burning, &c., the party indicted must be acquitted, as the means are different.

From these statements and authorities, Gentlemen of the Jury, you will draw three conclusions:

1. That the Government must prove the killing by the means stated.

2. That if the killing is proved to have been by other means, the prisoner must be acquitted: and

3. That if the jury are in doubt, whether the killing was by the means stated, or by some other means, they are bound, by their oaths, to acquit.

Now, apply these rules to the three first counts. To convict under the first two, the Government must prove, beyond reasonable doubt, that George Parkman was destroyed by the defendant, by means of striking with a weapon. To convict under the third count, the Government must prove, in a like manner, that he was killed, by being struck by defendant with hands and feet, and against the floor. And the Government must at least leave you satisfied, beyond reasonable doubt, that this was done in a deliberate, cruel manner, without reasonable provocation. And you are to remember, that it is a matter of no consequence, in this view, whether you believe that Professor Webster killed George Parkman or not, unless you believe, further, upon the proof and beyond doubt, that he killed him deliberately, and without provocation, either by striking him with a weapon, or by striking him with his hands and feet and against the floor.

It is not my province to argue upon the evidence, but I cannot refrain from asking, Where is there any proof, that George Parkman was ever destroyed in any of the modes, or by any of the means, which are alleged in the three counts under consideration? There is no such proof.

I come, now, to the fourth count. We shall submit here, may it please Your Honors, if it be regular, in this part of the case, to do so, that this count is totally insufficient, and ought not to be considered by the jury; and that the Government have no right to introduce any proof under it. And, further, if the Government have a right to introduce proof under it, still, that they have not done so.

This count states, as I have said, that the death was produced in some way or manner, and by some means, to the jurors unknown. Now, we assert, that there is no precedent, whatever, for any such count. If there is no precedent for it, the precedents are, of course, against it. There is no authority for it, which we have been able to find; and we find authorities directly against it.

I will cite, may it please Your Honors, Hawkins's Pleas of the Crown, book 2d, sec. 84, ch. 23, where the doctrine is laid down in these words: "If the killing were with a weapon, the count must show with what weapon in particular; and yet, if upon the evidence it shall appear that the killing was not by such weapon, but by some other, the variance is immaterial, and the appellee ought to be convicted, as shall be shown more at large, under the chapter of Evidence. And if the killing were not by a weapon, but by some other means, as by poisoning, drowning, suffocating, burning, or the like, the count must set forth the circumstances of the fact, as specially as the nature of it will admit: —"

I cite also, East's Pleas of the Crown, ch. 5, sec. 107: where it is said that, "It is essentially necessary to set forth, particularly, the manner of the death, and the means by which it was effected; and an omission, in this respect, is not aided by a general conclusion from the evidence, that he was murdered," &c.: also, Chitty's Criminal Law, vol. 3, p. 734, (Judge Perkins's edition:) also, Russell on Crimes, p. 557, to the effect that: "It is essentially necessary to set forth particularly the manner of the death, and the means by which it was effected; and this statement may, according to the circumstances of the case, be one of considerable length and particularity." And, as examples of strictness, I will refer to the same cases I have already cited, from Moody's Crown Cases, and from the fifth volume of Carrington and Paine. I refer to them again, on account of their bearing in this connection.

The count under consideration, may it please Your Honors, is clearly distinguishable from the count made use of in the case of Colt, reported in Hill's Reports, volume 3, page 432.

There, the allegation was, that the defendant murdered the deceased by means of striking and cutting him with some instrument, to the jury unknown: but the means were alleged; to wit, striking and cutting; and the instrument only, (which is immaterial,) was laid as unknown; and this furnishes the distinction between that case, and the one at bar.

Still further, we apprehend, may it please Your Honors, that this mode of pleading, which the Government have adopted in the fourth count, would give rise to great confusion, and would contravene many established rules. Under such a count, there might be an indefinite number of issues tried. Killing, in every possible way in which human life can be taken, might be brought within it, and tried under it.

We submit, then, so far as this count is concerned, that it is imperfect and insufficient, for the reasons stated; and that none of the evidence introduced is to be considered as applicable to it.

If, then, Gentlemen of the Jury, the Court sustain me in the view I have taken of the fourth count, the only question will be, Has the Government proved that Professor Webster murdered George Parkman, by any of the means which *are alleged?* And you will remember, that it is no hardship upon the Government, that they are required to allege the means of death, and prove them as alleged, for they have the power to insert as many counts as they please in the indictment, and so charge the death to have been produced in every manner, in which human life can be taken; but they must prove some one of the means so alleged.

III. I proceed now to the consideration of the question, What the Government must do, to be entitled to a verdict of guilty, against the prisoner?

This is already answered; they must prove these matters, to which I have before alluded, *beyond all reasonable doubt.*

This is an axiom of the law, but I wish to dwell upon it for a moment, and explain the reasons which have induced the law to adopt it.

I am aware, that this matter of reasonable doubt, from being so continually urged upon juries by the counsel for prisoners, has at length come to be looked upon by them with no great favor, and to be regarded as a sort of legal *hocus pocus*, by which guilty men sometimes escape the punishment due to their crimes; or, at best, as a gratuity afforded the prisoner, to which he has no actual right, but which he is permitted by the compassion of the law to urge, when he has nothing else to rely upon.

There never was a greater mistake in the world. This right to an acquittal, so long as a reasonable doubt of his guilt exists in the minds of his jury, is no mere gratuity to the prisoner; it is his absolute, indefeasible right; it is a right, for which the law takes care to make him give a full equivalent.

Why, look at the practice under our criminal system! Different countries have their different criminal systems; and I make no doubt, that the common law of England, whose system we follow, is as perfect as any: but look at the practice under this system, and ask yourselves, what might be the situation of any, and every man, in the community, were it not for certain compensations, which the law awards him, as his due, and of which this right is one. Consider, I say, how we proceed. We seize upon a man, tear him from his family, and lock him up in jail, charged with some enormous and horrible offence; and while his mind is paralyzed by the very idea of the crime imputed to him, by the danger of his situation, and by the grief and despair of his family, we tell him to prepare for his defence. What next? Why, *ex parte* proceedings go on. The matter is heard and adjudicated by a coroner's jury, where he is not present. It is afterwards tried before a grand jury, where he is not represented. An indictment is found; and then, with an accumulation of public opinion against him, necessarily formed upon these proceedings, he is brought into court, and put upon his trial. What is his situation then? He is placed at the bar, and his mouth is closed; his statements are not to be received; and, being thus placed, thus muzzled, as it were, witnesses are let loose upon him by the Government. And who are they? Perhaps interested witnesses; interested for rewards, interested to swear crimes from off themselves, interested sometimes from worse motives; but, what is more dreadful to contemplate, they are sometimes malicious, revengeful, uncharitable witnesses, anxious or willing to destroy the life, the reputation, or the prospects of a defendant. Now, in this situation, thus placed, and thus presented before a jury, what chance would many and many an innocent man have of an acquittal? Very small indeed, were it not for checks and counterbalances which the law has provided for him; and one of them is this same matter of reasonable doubt. The law says to the prosecution, You may take a man in this way; you may lock him up; you may close his mouth; you may produce these witnesses against him; you may try him over and over again, in the manner suggested: but here you shall stop. If, with all this, you cannot prove

him guilty, beyond reasonable doubt, he is to be acquitted. This is often all the protection an innocent man has.

Any one of you may be charged with an offence, committed by another, at a time when you were alone, or in company only with your wife; witnesses may be mistaken, and honestly so, as to your identity; you cannot prove an *alibi;* you cannot prove the negative, that you did not commit the offence: and what is your protection? You prove your previous character; — a character perfectly inconsistent with the possibility of your having committed the crime in question; and you rely upon this rule of law, touching reasonable doubt. This is then your only protection; your right. Shall it be called a gratuity? By no means. This reasonable doubt is intended by the law as a shield for the innocent; our criminal system renders it necessary; and although guilty men may sometimes take shelter behind it, the humane maxim of the law is, that it is better "that a hundred guilty men should escape, rather than one innocent man be convicted."

It may be asked, What is a reasonable doubt? The answer is well stated in the first volume of Starkie on Evidence, p. 448, 5th Am. ed.: "A juror ought not to condemn, unless the evidence exclude from his mind all reasonable doubt as to the guilt of the accused, and, as has well been observed, unless he be so convinced by the evidence, as that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest."

It must be such a certainty, then, Gentlemen, that you would not hesitate to act upon it in matters of the highest concern to your own interest. It must be such a certainty, I contend, that you would act upon it, if your own lives depended on it.

If you would not venture your own lives upon the certainty, what right have you to venture his?

These remarks bring me to the fourth head of my opening, which is, —

IV. The nature of the Government's evidence, and the rules of law applicable to evidence of that nature.

Evidence, Gentlemen, so far as there is any occasion of classifying it, for the purpose of this opening, may be divided into direct and circumstantial. Direct evidence needs no explanation; and, in point of fact, there is none of it in this case. But, merely for the purpose of convenience, I will say, that direct evidence consists of testimony derived from persons who have actual knowledge of the fact in dispute. For instance, if a person comes here, and swears he saw a certain transaction take place; — this is direct evidence; and all the

jury would have to inquire, would be, whether they believed the witness, or not.

But circumstantial evidence is, where a fact is attempted to be proved, not by anybody who saw it, not by any one who knows it, but by proving in advance certain other facts and circumstances, and then drawing a conclusion from them, that the particular fact, which we are endeavoring to ascertain, exists. This is called circumstantial evidence. For instance, take a case like this: — The Government undertake to prove, that a man was murdered. They bring nobody who saw it; but they go to work, and prove certain other facts, — many, or few: and having proved those other facts, they draw a conclusion, that the main fact was as they contend it was; — that is, that the murder was committed.

You see, thus, Gentlemen, that circumstantial evidence is weak compared with direct: that there is, in fact, no comparison between the strength of the two; and for the reason, that in circumstantial evidence the opportunities for human error are so greatly multiplied.

Of course, in the investigation of facts, all that we can do, — all that we can ever do, — is to approximate towards certainty. Nothing human is infallible. Employ what means we may, we shall not obtain absolute truth. We can only approximate; and approximate in accordance with the means of investigation, which we have at our command.

But consider, Gentlemen, the relative advantages of the two methods of investigation which we are considering.

If a murder is proved by direct evidence, what are the chances of error? A man comes, and swears to a certain fact. What are the chances of a jury being led into error? The chances depend upon his lying. If he swears falsely, then they may be misled. But he swears to a direct fact, and is not so likely to mislead them, because it is simple.

But, take a case of circumstantial evidence.

The proof sometimes consists, as in the present case, of numerous facts; — of scores of facts. Every single fact is a distinct issue. Every single fact must be proved, beyond a reasonable doubt. Here the chances of error accumulate. If the Government prove one fact, by one witness, he may lie. If they prove another fact, by another witness, he may lie; and so the chances of error multiply. And then, after all the circumstances are in, what are you to do with them? You are to draw the correct conclusion from them. Human judgment is called in, to draw the accurate conclusion from the facts. And here is an additional source of error. Circumstan-

tial proof is exposed to error from beginning to end; errors in the testimony by which the circumstances are intended to be established; errors in the inferences and conclusions which we draw from those circumstances.

Take the most simple case we can possibly put. — A man is found bleeding and dead upon the side-walk. Suppose a watchman comes, and swears, that he saw a man run from the body into a house near by. A second witness swears, that, the house being pointed out to him, he went in, and arrested a man who appeared to be out of breath. A third comes, and says, that he afterwards found blood on the clothes of the prisoner. Take the first witness. He may be mistaken about the man's identity; about the identity of the house; and he may lie; — three chances of error. The second may be mistaken in the man whom he arrested; or the house which he thought was pointed out; or he may lie; — three more chances of error. And the third may be able to detect blood, or not; he may be mistaken in his statement, that the clothes were those of the prisoner; or he may lie, too. Here are all these accumulated chances of error. And then, when all these facts are proved, correct conclusions are to be drawn from them. It may be, that he did commit the murder. It may be, that he was an innocent man, who was running that way; it may be, that he ran from terror, at seeing the blow struck; it may be, that he was a friend of the deceased, flying for his own life. I put this as a simple case; and you see how great the chances of error are. But when you come to such a case as the one at bar, there is no telling to what extent these chances multiply.

It is necessary also to remember, Gentlemen, as I apprehend, — certainly, it is not the least important objection to this kind of evidence, — that we are always drawing incorrect conclusions from it. Hence, multitudes of innocent persons, who have been convicted on circumstantial proofs, have lost their lives, not so much from falsity on the part of witnesses, as from incorrect inferences drawn by jurors.

Take that most common of all cases, cited continually: where an uncle and a niece lived together; and the niece, one evening, was heard, crying out, begging him not to kill her. On the next morning, she had disappeared. The uncle, being charged with the deed, and being put to his wits' end, found another girl, to simulate his niece. The deception was found out, and the man was convicted and hanged. But afterwards the niece came back, having only run away. Here were circumstances, laid before conscientious jurors; circumstances proved by conscientious witnesses. But the jurors erred in the conclusion they drew from them.

He who is arrested with stolen goods in his possession, has to answer for it. It implies a theft. There is an old, and well-established case, in illustration of this; where a man, who had stolen a horse, got a countryman to hold him, knowing he was pursued. Presently, a constable came up, and arrested the countryman. Here was a plain case. He was found with the stolen property in his possession, immediately after the theft had taken place; and he was hanged for it. The circumstances proved, were true; the inference, only, was false.

I am induced to dwell upon this for a moment, because I am perfectly aware, that it is often affirmed, that circumstantial evidence is necessarily correct; that "circumstances cannot lie," — with various other sayings, that are totally false; sayings, which probably applied to the circumstances in connection with which they were first used, but which, by being stupidly repeated over and over again, have attained to the dignity of proverbs. The truth is, that circumstances do not, — but the witnesses who undertake to prove them, may — lie, and, the conclusions drawn from circumstances by human judgments may lie. It is idle to suppose that there is any particular virtue in circumstantial evidence. On the contrary, it should be remembered, that it is weak and uncertain.

I will read, to this point, as a part of my argument, from Mr. Best's work on Presumptions, page 253. Speaking on this very subject, and in regard to this prevalent idea, that circumstantial evidence is strong, he says: "Juries have been told, from the Bench, even in capital cases, that, 'where a violent presumption necessarily arises from circumstances, they are more convincing and satisfactory than any other kind of evidence, because *facts cannot lie.*' Numerous remarks might be made on this strange proposition. The first that presents itself, is, that the moment we talk of anything, as a consequence *necessarily* following from others, all idea of *presumptive* reasons is at an end. Secondly, even assuming the truth of the assertion, that facts, or circumstances, cannot lie, still, so long as witnesses and documents, by which the existence of these facts is to be established, can, so long will it be impossible to arrive at infallible conclusions. But, without dwelling on these considerations, look at the broad proposition — *facts cannot lie.* Can they not, indeed? When, in order to effect the ruin of a poor servant, his box is opened with a false key, and a quantity of goods, stolen from his master, deposited in it; or, when a man is found dead, with a bloody weapon lying beside him, which is proved to belong to a person with

whom he had a quarrel a short time before, and footmarks of that person are traced near the corpse, — but the murder has, in reality, been committed by a third person, who, owing a spite to both, put on the shoes and borrowed the weapon of one to kill the other; — did not the circumstances lie — wickedly, cruelly lie? There is reason to fear, that blind reliance upon the *dictum*, 'that circumstances cannot lie,' has occasionally exercised a mischievous effect in the administration of justice."

There are besides, Gentlemen, in a great cause, like the one we are now trying, moral reasons, why circumstantial evidence may mislead. There is a well-known tendency of the mind, when great crimes are suspected, which leads witnesses especially, and even jurors, to exaggerate facts, and to place great reliance upon their own shrewdness. This, Gentlemen, is so well stated in the same book which I have quoted, that I will read again from it, as a part of my argument. Speaking on this subject, Mr. Best says, "There is an anxiety naturally felt for the detection of crimes, particularly such as are either very heinous, or peculiar in their circumstances, which often leads witnesses to mistake or exaggerate facts, and tribunals to draw rash inferences; and there is also natural to the human mind a tendency to suppose greater order and conformity in things than really exist, and a sort of pride or vanity, in drawing conclusions from an isolated number of facts, which is apt to deceive the judgment. Accordingly, the true meaning of the expressions, so frequently to be found in our books, that all presumptive evidence of felony should be warily pressed, and admitted cautiously," &c.

So far, with regard to the nature of the Government's evidence. In this case it consists entirely, solely, of that which is circumstantial: and, in many instances, the circumstances themselves which are relied upon, are actually proved, if at all, by other circumstances. Who shall say, to what extent the sources of error have been multiplied?

Owing to the known tendency of circumstantial evidence to mislead the mind, owing to the dangers which are thus likely to arise, the law has adopted certain rules, which are to govern and to guide jurors in considering it. Some of those rules I shall call your attention to, now, because I consider them pertinent in this connection. There may be others mentioned hereafter.

The first rule is, *that every circumstance, which is relied on, must in itself be proved beyond all reasonable doubt.* I refer for this, may it please the Court, to the first of Starkie's Evidence, p. 442, (5th Am. ed.) which I will not stop to read.

Every circumstance is a separate issue, in itself. Every circumstance is to be proved beyond reasonable doubt; and this, you understand, means, beyond reasonable doubt, when all the evidence is in. When you come to consider all the evidence in the case, introduced by each side, upon each point, you are to be satisfied of each individual circumstance, beyond reasonable doubt.

Hence it follows, necessarily, that if, in a long train of circumstances, upon which the case is built up by the Government, there is any one single circumstance which is not thus established, there is an end to the whole case, at once. If they undertake to anchor their case by a chain of circumstances, and one link breaks, from its own intrinsic weakness, or from any force which the opposite party brings against it, the case is ended.

Secondly, Gentlemen, *the circumstances, when proved beyond reasonable doubt, must establish, to a moral certainty, the particular hypothesis attempted to be proved by them.* That is to say, not only the circumstances must be proved beyond reasonable doubt, but you must also be satisfied that the inference drawn from them is correct, to a moral certainty. For this rule, I refer to Wills on Circumstantial Evidence, page 187.

Thirdly, the circumstances, — and I pray your attention to this, — *the circumstances, which are proved beyond reasonable doubt, must not only support the particular hypothesis which the Government intend they shall support, but they must not support any other hypothesis.* That is to say, they must not only sustain the inference which the Government draws from them, but they must exclude every other possible inference.— Because, if one set of circumstances establishes two distinct hypotheses, and one is contrary to what the Government asserts, and the other in accordance with it, — that is to say, if one is in favor of the defendant's guilt, and the other of his innocence, — there is an end of the Government's case. The jury are bound to adopt the hypothesis which favors innocence. And it is from this rule being disregarded, and overlooked, that a vast quantity of misery has been inflicted upon innocent people.

I will refer to Best upon Presumptions, page 282.

Mr. Best refers to the first of Starkie's Evidence, page 577, third edition, (page 446, 5th Am. ed.,) and to Wills on Circumstantial Evidence, page 187, as authorities. The rule is there stated, as also in several other works, that the evidence must be such as to exclude, to a moral certainty, every hypo-

thesis but that of the guilt of the defendant. And if any other hypothesis can be sustained, it is for the jury to assume that hypothesis to be the true one. And Mr. Best adds, "that this must be understood by reference to instances where inattention to contrary hypotheses has led into error. In the first place, then, the safety of individuals has occasionally been jeopardized by the fabrication of circumstances; which may be either casual, or intentional. Under the former are ranked those cases where the accused, although innocent, is shown to have had peculiar temptations, or facilities, for committing the act with which he is charged; as where, in cases of murder, he has lived with the deceased, or had an interest in his death; or where a man becomes covered with blood, by coming in contact, in the dark, with a bleeding body; or death is produced by a weapon which is proved to be the property of a person, who, nevertheless, is not the real criminal." I will refer again, also, to Starkie's Evidence, (5th Am. ed.) p. 447, for a particular case, which, with the leave of the Court, I will read to the jury. "A servant girl was charged with having murdered her mistress. The circumstantial evidence was very strong; no persons were in the house, but the murdered mistress, and the prisoner; the doors and windows were closed, and secure, as usual; upon this, and some other circumstances, the prisoner was convicted, principally upon the presumption, from the state of the doors and windows, that no one could have had access to the house, but herself, and she was accordingly executed. It afterwards appeared, by the confession of one of the real murderers, that they had gained admission to the house, which was situated in a narrow street, by means of a board thrust across the street, from an upper window of the opposite house, to an upper window of the house of the deceased; and that the murderers retreated the same way, leaving no trace behind them." And there are numerous other cases, illustrating Mr. Best's views.

I have read this by way of illustration, as a case in which the circumstances were proved. The error was in the inferences. Such cases occur in almost every man's life-time; and hence, these rules are considered most essential for every citizen's protection; and cannot be lost sight of without endangering the accused party, and every other person who may be placed in the same situation.

The text-writers I have cited, state these rules so clearly, that there is no occasion for me to enlarge upon them; I will, however, detain you, on this subject, a few moments longer,

for the purpose of showing, by way of example, the application of the first of these rules to the Government's evidence.

The evidence introduced by the Government, consists of one great chain of circumstantial testimony, with which they have endeavored to surround the defendant, and by the weight of which, they hope to crush him. This chain consists of two great sections, —

First, That George Parkman died by an act of violence.

Second, That Professor Webster perpetrated that act.

Each of these sections consists of numerous links. Now take the first section of this chain, as I have called it, — namely, that George Parkman came to his death by violence, — and you will find the first link in it to be the alleged circumstance, that Dr. Parkman, being in the Medical College, on the 23d of November last, never came out; to this, they add other other circumstances, and argue, that the body found, was his, and so on, to various conclusions.

Take the second section of the chain; that Dr. Webster committed the murder: — you will find the first link here, to be the alleged circumstance, that Professor Webster was the last person, into whose company Dr. Parkman can be traced; other circumstances are added, and then they argue, again, that the act was committed by Professor Webster. Suppose, when you retire to consider the case, upon the whole evidence introduced by both sides, you do not feel satisfied beyond reasonable doubt, that Dr. Parkman did *not* come out of the Medical College, after his interview with Professor Webster, on the 23d of November, the defendant is entitled to an acquittal; for here is one link, one material circumstance, not proved.

Suppose, again, that, upon all the evidence, you are not satisfied, that Professor Webster was the last person, in whose company Dr. Parkman was known to be in, that same 23d of November, then, likewise, the defendant is entitled to an acquittal: — and this, upon the strength of the rule of law I am now applying.

The manner in which the Government attempt to prove the identity of the body, found in the laboratory, furnishes another simple illustration of the operation of another of these rules. The first circumstance, on which the Government rely for this, is the peculiar form of the block of teeth, found in the furnace; but, suppose it should appear, that many other blocks have been cast for other individuals, with the same peculiarity; then, the identity of the body cannot be legally inferred from the supposed peculiarity, for it would support the hypothesis, that the teeth might have been those of ano-

ther individual, as well as it would support the hypothesis, that they were Dr. Parkman's.

The great points, therefore, to be borne in mind, are, *First*, That every circumstance relied upon, must be proved beyond reasonable doubt. *Secondly*, That those circumstances must establish, to a moral certainty, the guilt of Professor Webster: — and for this, — the *Third* rule must be complied with; that is, these circumstances must not support any other hypothesis.

Now, what must be the line of defence taken by any man, who is indicted, and tried upon circumstantial evidence? In the nature of things, it must consist simply, in denying, that the circumstances relied on by the Government are, or can be considered, when all the evidence is in, as established beyond all reasonable doubt. And this is the ground we take. — These circumstances are not now, and, therefore, *a fortiori*, cannot, when our evidence is in, be considered as proved, beyond all reasonable doubt. And again; — The circumcumstances proved, do not sustain the hypothesis attempted to be founded upon them, to the exclusion of all others; but, upon the contrary, conclusions can be drawn from these circumstances, in favor of the innocence, better, than in favor of the guilt of Dr. Webster.

So much, with regard to the rules of law, as applicable to the crime charged; as applicable to the manner in which it is charged; as applicable to the nature of the evidence which has been adduced here.

I come, now, to state, very briefly, and very generally, the heads merely, under which we intend to introduce our evidence. We do not intend, Gentlemen, in this stage of the proceedings, — for, it is not necessary, and, it would, in my opinion, be totally irregular, — to go into any examination of the circumstances which the Government have been attempting to prove, or to show which of these circumstances we deny, which admit, and which explain. That duty must be performed in another stage of the case. My duty is, now, to state to you the heads under which we intend to introduce our proof.

We do not intend to produce any direct evidence, for the purpose of explaining, by what means those human remains came into that laboratory, or beneath it. Professor Webster stands on the position, which he originally took. He knows nothing about it. They are the remains of a human body. We can no more explain how they came there, than the Government can. We can explain it, only by hypotheses, as the

Government has attempted to explain it. The defendant stands, as each of you would stand, if similar remains were found upon your premises, under the foundation of your house, or in your work-shop. So he stands, and so he must stand. And we know of no direct proof, by which a thing of this kind can be explained.

Again, in regard to the interview which took place between Dr. Webster, and Dr. Parkman, it is impossible for us to introduce direct proof, concerning it. In the nature of things, no direct proof can be introduced; the circumstances, exclude it. The statement of the case, as put to you, is, that the parties met alone, and that the interview, was an interview by themselves. Of course, there can be no proof brought, about that interview. The evidence, in regard to it, — seeing that we have no direct proof; — seeing that, from the nature of things, we can have no direct proof; — must be circumstantial. And such circumstances, as we can introduce, in connection with such of the Government's circumstances, as you give credit to, must constitute the bulk of the testimony in this case, upon which you must render your verdict.

The heads, under which we shall introduce our evidence, are simply these:

Professor Webster stands charged with having committed the most cruel and inhuman act, which one man can commit against another.

First, — then, to show that he is not the person to commit an act of this kind, we shall prove his character and reputation.

The law, Gentlemen, I am frank to say to you, does not give great weight to character, where direct evidence is brought to bear upon a party. But, when a man stands charged, on circumstantial evidence, and in a doubtful case, with the commission of a great crime, the greatest possible weight is given to character. And his character is always admissible, with this view.

If it should be proved, by direct evidence, that a man had committed murder, it would be of little importance to prove, that he had previously been of good character. The only use that could be made of his character, in such a case, would be to show that the witnesses, who swore against him, did not tell the truth. The argument would be, — it is incredible that a man of such a character could commit such an offence. But when you come to a doubtful case, — a case of circumstantial evidence, — then, weight is to be given to character; and a man has a right to be judged of, by his fellow-

citizens, by the character which he has earned and established by a long life.

Now, in introducing character, a man is only at liberty to introduce it so far as his traits of character have a direct bearing upon the offence charged. For instance, suppose a man should be indicted for larceny. It would be perfectly ridiculous, to show that his character for humanity was good. His character for honesty would be in issue. Suppose a man were indicted for perjury. His character for truth and veracity would be at stake, not his reputation as a man of peace.

Professor Webster is charged with having committed a violent, a malicious, a cruel act. We will lay before you proof of his character in these respects: — that he is a man of peace, the least qualified of all men to do a deed of violence; — that he is kind and affectionate, with a disposition far removed from malice; — that he is humane; eminently so: no one can reproach him with a cruel act. These are the traits of his character which we are permitted to prove, under the present issue; and we shall make use of that permission.

Second, — we shall introduce proof, Gentlemen, in regard to the question, whether Dr. Parkman was ever out of the College, after that Friday noon. For, we are mistaken, if there is not positive proof to show that he did come out of it. This may not be decisive, as to whether the body found, is his, or not; but it will be decisive, as to whether he was destroyed by Professor Webster, as is alleged by the Government.

Third, — we shall present to you, so far as proof is accessible to us, the entire history of Professor Webster's conduct, from Friday, the 23d of November, up to the night of his arrest; from which it will appear, that his demeanor, his words, and his deeds, were all those of an innocent man; and from which, also, if I mistake not, you will be satisfied, that very little if any reliance, is to be placed on the testimony of Littlefield.

It is not necessary that I should go into the details of the facts which are to be proved under these several heads. It is sufficient for me to say, that, under the first, it will appear that Professor Webster is a person of a mild and amiable disposition; remarkable, even, for kindness to all about him: his temperament is nervous; and, like all nervous men, though occasionally petulant, he has never been known to be violent, but is, in truth, a man of constitutional timidity. He has always been ardently attached to his profession as a chemist; and to it, he has devoted his days and his nights. Whatever advancement he may have made in that profession, whatever

accumulated knowledge he may have gained in it as a man of science, still, with reference to his dealings with the world, he has always remained anything but a man of shrewdness. On the contrary, he may be considered quite the reverse. That, at least, is his character, so far as we know it.

In the pursuit of his favorite science, we shall show, that it is no new thing for him, to be locked up in his laboratory; that it is no new thing for him, to exclude the janitor, or anybody else from his rooms, when conducting his experiments. Such has been his constant practice; and it is a safe and necessary practice in all laboratories. True it is, that, for a short time after the introduction of the Cochituate water into the College, he permitted Littlefield's family to take water from the pipes in his laboratory, for the purpose of keeping them free from corrosion; but, for very good reasons,—(finding that his laboratory had been used for improper purposes,)—he stopped that use, locked his doors, and permitted the water to waste through the sink-spout. This is really the head and front of his offending:—from the fact that his doors were locked: from the fact, that the janitor, and some others, could not readily gain admission; and from the fact, that the water was heard running in his apartments during his absence, it has been attempted to fasten upon him a train of suspicions, which jeopardize his character and his life.

Under the second and third heads, we shall freely admit, that the interview took place, as alleged, between one and two o'clock, on the 23d of November; but shall distinctly prove, that Dr. Parkman left the College precisely as Professor Webster has stated; that he was seen almost immediately after he left it, and subsequently, during the afternoon of that day, in various parts of the city, by highly respectable individuals, to whom his person was as well known, as it was to any of the Government's witnesses. And this is all that is known by us, or by any one else, concerning him.

Professor Webster, himself, left the College at an early hour that afternoon; sufficiently early, to be at his house, in Cambridge, at his usual tea-hour, which was six o'clock. He took tea with his family, and then he and his wife accompanied their daughters to the house of a neighbor, where the daughters were engaged to meet a party of young people. Here the Professor and his wife left the young ladies, and went themselves to the house of another friend, at which they spent the evening. From thence, they returned home, and remained up, until their daughters came in, which was about one o'clock, when all the family retired at the same time.

We shall also show you how Professor Webster passed the rest of that week, up to the moment of his arrest: — that every morning he breakfasted at home, at an early hour; that his forenoons were spent in his laboratory, as was his wont; that he dined at Cambridge with his family every day; and spent his afternoons and evenings in their company.

These are the circumstances which we intend to prove; and, in addition, we shall offer proof on various points, directly contrary to the testimony which the Government have put in.

This, Gentlemen of the Jury, is all the opening statement which I deem it necessary to make; and I shall now proceed to introduce the evidence to support it.

Mr. Sohier, having closed his opening address, at five minutes to six o'clock, proceeded to call the witnesses for the defence.

Joseph T. Buckingham, *sworn*, — *examined by Mr. Sohier.* I reside in Cambridge; am acquainted with Professor Webster, and have been so, for thirty years, I think. For the last seventeen years, I have resided in his neighborhood, at Cambridge. I have never heard of his being charged, with any act of violence, inhumanity, or bad temper. We have been on familiar terms, and have met frequently; though, perhaps, I am not so well acquainted with him, as some of his other friends.

Cross-examination waived.

John G. Palfrey, *sworn*, — *examined by Mr. Sohier.* I am acquainted with the defendant; have been his neighbor, at Cambridge, for some fifteen years. In regard to his character for violence, or inhumanity, I have never heard it discussed. I have an opinion of my own as to it.

[The Chief Justice stated, that evidence of character could only relate to the general estimation in which a person was held by his acquaintances, or the community to which he belonged; and that, individual and personal opinion was not competent testimony.]

Dr. Palfrey, resumes. — I have never heard any acts of violence, or inhumanity, imputed to him. I have understood his reputation to be, somewhat, that of a petulant, excitable man, but whose irritation would exhaust itself in a harmless way; — in words only.

JOHN H. BLAKE, *sworn, — examined by Mr. Sohier.* I reside in Boston; am acquainted with Professor Webster, and have been so, for twenty-five years. At one time, I was quite intimate with him, having been engaged with him in the same laboratory. This was the first year of our acquaintance, and when he lived in Boston. He has been esteemed very highly, as a peaceable and humane man. I mean, in the society in which he moves.

Cross-examined, by the Attorney General. — I was more intimate with him the first year of our acquaintance, than I have been, since.

JAMES WALKER, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; have been well acquainted with the defendant since I lived there, — some ten years. For five years, I have been his neighbor. I have never heard anything against his character, as a peaceable and humane man. I have never heard him charged with any acts of violence.

No cross-examination.

FRANCIS BOWEN, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; have been acquainted with Professor Webster, about twenty years. I have met him frequently, and we have had many common acquaintances. I think, that he has had the character of a hasty, irritable man, but lacking strength and depth of passion; — quickly excited, but quickly forgetting the cause of offence. I should say, also, that he had been esteemed a timid man. I have never known any acts of violence imputed to him.

No cross-examination.

JOSEPH LOVERING, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; have been acquainted with Professor Webster, some twenty years. I have always regarded him, as a peaceable, humane man, and have never heard anything of him, to the contrary.

No cross-examination.

GEORGE P. SANGER, *sworn, — examined by Mr. Sohier.* I reside in Charlestown; have been acquainted with Professor Webster, some twelve years. I should think that he had been held in very good estimation, as a peaceable and humane man. I have never heard any acts of violence, or inhumanity, charged to him.

No cross-examination.

CONVERS FRANCIS, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; have known the defendant many years. Since 1842, I have seen him more especially, in the common intercourse of social life; having been a neighbor. So far as I know, his estimation as an humane and peaceable man, has been highly honorable and satisfactory. I have never heard anything against it, in either of those respects.

No cross-examination.

ABEL WILLARD, *sworn, — examined by Mr. Sohier.* I am a resident of Cambridge; have known Professor Webster, for twenty years, or more. His reputation as a peaceable and humane man, has been good. I have heard nothing against it.

No cross-examination.

JOHN CHAMBERLAIN, *sworn, — examined by Mr. Sohier.* I am a carpenter; reside in Cambridge. I am acquainted with Professor Webster, and have been so, twenty years. His reputation, as a peaceable, quiet, and humane man, I should say, had stood very high: that is, as a peaceable and good neighbor. I have never heard any acts of violence imputed to him.

No cross-examination.

JOEL GILES, *sworn, — examined by Mr. Sohier.* I am an attorney at law; reside partly in Cambridge, (in summer,) and partly in Boston, (in winter.) I have known Professor Webster, since 1829. So far as my knowledge goes, his reputation for peacefulness and humanity has been good. I have never heard any acts of violence, or inhumanity, imputed to him.

No cross-examination.

EDMUND T. HASTINGS, *sworn, — examined by Mr. Sohier.* I reside in Medford; have formerly been a merchant. I am well acquainted with Professor Webster, having known him since 1825. I sold him the lot of land on which he built his house, in 1834, and have since sold him two other lots. I never heard anything to the contrary, of his being a quiet, peaceable, and humane man, until since his arrest. Though I have not lived in Cambridge, since 1834, I had been much there, and have had opportunity to hear of his character, if it had been called in question.

No cross-examination.

JOHN A. FULTON, *sworn, — examined by Mr. Sohier.* I reside in Cambridge, and am a painter, by trade. I have known Professor Webster, for the last twelve or fourteen years. My opinion of him has always been, as of a mild, amiable, peaceable, and quiet gentleman; and I have never heard any other character of him.

Cross-examined, by the Attorney General. — I have no recollection of having ever witnessed any acts of the defendant's, of a different character, from that which I have ascribed to him. I don't know that he is an irritable man. I recollect, that he took an active part in decorating Harvard Hall, at Cambridge, on the occasion of the late inauguration, and that he received orders to stop: but I did not notice, that he was made very angry by it. He was disappointed, and proceeded to remove some of the decorations; but I never saw, or heard, that he tore them down, or manifested any passion on the occasion.

JAMES D. GREEN, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; have been Mayor of the city: but am not so, now. I have known Professor Webster, for fifteen or twenty years; more especially, during the last six or seven. So far as I am able to judge, he has been regarded in the community, as a quiet, peaceable, and humane man.

No cross-examination.

CHARLES M. HOVEY, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; keep a seed-store in Boston. I have known Professor Webster, for twenty, or twenty-five years. He has been held very high in public estimation, as a peaceable and humane man; as high, as one would wish to be.

No cross-examination.

DANIEL TREADWELL, *sworn, — examined by Mr. Sohier.* I reside at Cambridge; have been connected with the College, as Rumford Professor, for eleven years; but am not so, now. I have known Professor Webster, nearly thirty years. I think, that he has been esteemed a peaceable and humane man; perhaps, rather nervous and irritable, yet quite a harmless man.

No cross-examination.

At this point, at seven minutes to seven o'clock, P. M., the Court adjourned to to-morrow morning, at the usual hour.

NINTH DAY. — *Thursday, March 28th.*

The Court came in, at nine o'clock. The jury answered to their names, and the counsel for the defence proceeded with the introduction of their testimony.

NATHANIEL I. BOWDITCH, *sworn, — examined by Mr. Sohier.* I reside in Boston; have known Professor Webster, twenty years. I have never heard his character, as a quiet and peaceable man, doubted. I should think, that his general reputation has been that of a mild and amiable man, though of a quick and irritable temper.

No cross-examination.

J. DUNHAM HEDGE, *sworn, — examined by Mr. Sohier.* I reside at Cambridge; have known Professor Webster, twenty-five years. I have never known, or heard, anything against his character, as a quiet, peaceable, and humane man. I should think his reputation, was that of a nervous and excitable man, but not passionate, or violent.

No cross-examination.

JAMES KAVANAGH, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; have lived there, sixteen years. I know Professor Webster, and have lived with him as a servant, three years. His reputation, is that of a kind, agreeable, and peaceable man, though sometimes hasty. I always found him kind and pleasant in his family.

No cross-examination.

ABRAHAM EDWARDS, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; am the City Marshal of that city. I have known Professor Webster, fifteen years; have lived in the same ward with him. I have never known anything to the contrary, of his being a quiet, peaceable, and humane man.

No cross-examination.

PELEG W. CHANDLER, *sworn, — examined by Mr. Sohier.* I am acquainted with Professor Webster, and have been so, some twelve years. I should think his estimation, was that of a timid, mild man, deficient in energy of character, and strength of passion. I should think his reputation for humanity decidedly favorable.

To the Attorney General. — I mean, that his passion would not be of a strong and lasting description.

MORRILL WYMAN, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; have been a neighbor of Professor Webster's, twelve years, and been acquainted with him, some fifteen. So far as I know, and have heard from others, his reputation has been that of a kind, amiable, and agreeable man.

No cross-examination.

JARED SPARKS, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; am President of Harvard University. I have been intimately acquainted as a neighbor, there, with Professor Webster, for seventeen years. From my own observation, I have never known anything of him, but as a kind and amiable man; and up to the time of his arrest, I had never heard anything by report, which did not strongly imply, that he was a man of peaceable and humane character.

To the Attorney General. — Since his arrest, I have heard remarks, which I could not trace to any reliable source, affecting his character in the particulars named; but previously to that, I can say with confidence, that I never heard anything of him, but as of a kind and amiable man.

CHARLES O. EATON, *sworn, — examined by Mr. Sohier.* I reside in this city; am acquainted with Professor Webster, and have been so, for three years past. His estimation, is that of a quiet and peaceable man. I have always found and heard him spoken of, as such. I should think him a kind man.

I am a sign and ornamental painter. I have been employed by Professor Webster to do painting for him, during the last two or three years. In that employment, I have been to the Medical College, frequently, to see him; more, during the medical lectures, than at any other time. I always found him in his private room, or in the lecture-room. He always told me to come to his private room, by the door leading from the dissecting-room entry. I have frequently been to the College to see him, when I could not get admission to his rooms, any way; the doors being all locked on the inside. I have been there, when the janitor, himself, could not gain admission; and have gone away, a great many times, in consequence of finding the doors fastened up. I have oftener found the doors bolted, than otherwise, when I

called; unless it would be at lecture hours. I would find less difficulty, then, in getting in. I presume, that Professor Webster was in his rooms, at these times; as Mr. Littlefield would tell me so, when I saw him.

I was at the College, last, by appointment, on Monday, the 12th of November. I received a note from the Professor, on the 9th, relative to preparing some diagrams for him, and requesting me to call at the College, and see him about them. I went there, and rang the outside bell. Mr. Littlefield came to the door, and said, that I could not see him; that he was busily engaged. I showed him Dr. Webster's note, appointing me to call, and he then went with me to gain admission to the Doctor. He tried the lecture-room door, and found it bolted on the inside. We also found the lower laboratory-door bolted; but, finally, got in, by some other door.

Cross-examined, by Mr. Bemis. — I did not go to the Medical College, any other time, this fall, than that named; the 12th of November. I was there last, before that, some time during the summer previous; the summer of 1849. I went there, about the diagrams which the Doctor was to use in his lectures. It was while his course was going on; in summer time. I had no occasion to go there, at any other time. During the course, I was there, every week. I don't know when Professor Webster's course ends; but I was there in warm weather. I have prepared the diagrams for three courses of his lectures.

I was an apprentice to Thomas C. Savory, when I first went to the College, to do work for Professor Webster. I went into business, for myself, in October, 1848. I used to call at the College, oftenest, during my apprenticeship. I was there, almost every lecture day. I believe, that the lectures were given, every day, but Thursdays, and Saturdays; but am not certain about the days, now, though I used to know them, at the time. I cannot tell the latest period that I have been at the College, before the lectures ended. I should not like to say, that it was as late as May, or April. I only know, that it was warm weather: so warm, that the doors and windows were open. It might have been during the January thaw; I can't say.

Dr. Webster wanted me to wait for my pay, for my paintings, till the course of lectures began, in the fall. This was as early as January, or February, 1849.

Direct, again. — Not being a medical student, I only know of the time when the lectures began and ended, by what I

gathered from going to the College. I did not know that he lectured at Cambridge, to the undergraduates, in summer time.

To the Chief Justice. — When I wanted to see him, I usually went at one o'clock.

ROBERT E. APTHORP, *sworn, — examined by Mr. Sohier.* I reside in Boston; resided in Cambridge, from 1842, to 1845. I know Professor Webster, and have known him, some six years. During my residence, at Cambridge, I was quite intimate with him, and was well acquainted with his family and the society in which he moved. I never heard anything to the prejudice of his character, as a quiet and peaceable man, while I lived in his neighborhood.

No cross-examination.

SAMUEL S. GREEN, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; have lived there, forty years.

I recollect the Sunday after Dr. Parkman's disappearance. I was the person who gave the information to the City Marshal, that Dr. Parkman had been seen to go over to Cambridge. I was at the toll-house, the evening referred to, when two men stopped in and entered into conversation. One of them was Mr. Littlefield. — At least, he said that he was the person who had charge of the Medical College. Mr. Littlefield said, that he had seen Dr. Webster pay Dr. Parkman $470. I understood him to say, at first, that he saw the money paid; but, afterwards, that he did not actually see it. I was sitting, back, in the toll-house, when the conversation occurred; and there was a police-officer, over, against me. I understood Mr. Littlefield to say, that he saw Dr. Parkman go out of the College, the Friday, when the money was paid him. I noticed the discrepancy in his statements, and remarked upon it, at the time, after he went out.

Cross-examined, by Mr. Bemis. — There were several persons present. Mr. Edward Whitney was one; and he understood him, as I did, at first; but I understand that he has since changed his mind. Mr. Fifield, the toll-man, was there. I did n't know the police-officer; do n't know the others. I cannot tell how the conversation originated, nor Mr. Littlefield's exact words. He named the sum, as $480; he did not give any odd cents.

Mr. Bemis. — You stated, a moment since, that it was $470.

Witness. — No, I said that it was $480.

Two of the jurors, simultaneously. — He said, $470.

Witness. — Well, it was $480; and I made a mistake, in saying that it was $470, if I said so. I cannot recollect where he said he stood, when he saw this money paid; in what particular room. I do n't recollect his saying anything about seeing Dr. Parkman come into the College. I did n't hear anything about Dr. Webster's having told Mr. Littlefield, himself, this account about Dr. Parkman's paying the money. I can't tell much about the conversation; only, that I thought he said once, that he saw him pay the money to Dr. Parkman, and then, again, that he did not. I concluded, from the whole, that he meant to be understood, that he had not seen the money paid.

Samuel P. P. Fay, *sworn, — examined by Mr. Sohier.* I reside in Cambridge; have done so, some forty years. I have known the defendant, ever since he was a professor: and for the last fifteen or twenty years, I have been a near neighbor and intimate acquaintance, belonging to the same social circle with him.

I have always understood his reputation, to be that of a kind, peaceable, and humane man; eminently social; by no means, a passionate, or violent one, though somewhat nervous and excitable. I should say that he had been esteemed both benevolent and humane. At least, I never heard anything to the contrary.

I recollect the day of Dr. Parkman's disappearance. I heard of it the next day, Saturday, in the evening. I saw Dr. Webster, that Friday, in the evening. I had called in, accidentally, at a mutual friend's house, Mr. Treadwell's, about nine o'clock, and there found Dr. Webster, and his wife, and Dr. Morrill Wyman, and his wife. I stayed there, about an hour, I think. I have no particular recollection of Dr. Webster's appearance that evening. There was nothing in it, to attract attention. He seemed as usual, and participated in the conversation. There was a good deal of conversation between him, and Dr. Wyman, and Mr. Treadwell, upon various subjects; — the common topics of the day. We occupied ourselves with conversation, simply. I think one subject broached with Dr. Wyman, was, in regard to the recent improvements or discoveries in ventilation.

I saw Professor Webster, several times, during the following week. I was at his house, Sunday, or Monday evening; I am not certain, which; and, again, Tuesday evening. I think I called in, on Sunday evening, to make inquiry in regard to Dr. Parkman; supposing that Dr. Webster would

be likely to know the news in regard to it. Another evening, Monday, or Tuesday, I spent two or three hours at his house, playing whist, having been invited to play with himself and family. I sat down and played three or four games; Dr. Webster and his daughter, playing against Mrs. Webster and myself. I am confident of having been at his house, two evenings, out of three, — Sunday, Monday, and Tuesday.

I inquired of Dr. Webster, himself, directly, in regard to Dr. Parkman. I was only there a short time, on that occasion.

Cross-examination waived.

Joseph Kidder, *sworn, — examined by Mr. Sohier.* I am a druggist, and have a shop in Court street, in this city.

I know Professor Webster. I remember the day of Dr. Parkman's disappearance. I saw the Professor in my shop, that afternoon, Friday, the 23d, just before lighting up; about five o'clock. It was about fifteen minutes after sundown, say, a quarter before five. He was there but a very few minutes. I am positive as to the day, for I have a bill of the articles which he bought, by which I fix it.

Cross-examined by Mr. Bemis. — He called to buy a box of Cologne, and purchased a whole one. A box contains six bottles. He did not pay for it.

Direct, again. — He took it away with him.

Marianne Webster, *sworn, — examined by Mr. Sohier.* I am the daughter of Dr. Webster.

Since his arrest, I have endeavored to recollect the places in which my father was, and the particulars of his conduct, during the week succeeding Dr. Parkman's disappearance.

On Friday, the 23d, Father was at home, at tea, a little before six o'clock. He drank tea at home. He remained at home, till eight o'clock, and then went to a neighbor's house with us. We saw him, again, at half-past twelve o'clock. He accompanied Mother, my two sisters, and myself, to a friend's house, to a small party, and left us at the gate; Mother keeping on with him. When we returned home, at half-past twelve, he opened the door for us. We remained up, a half an hour, talking with him; and he retired to his room, at one o'clock. We all went up-stairs, at the same time. I do n't know, of my own knowledge, where he had spent the evening.

It was his custom, to breakfast at home; but not being up early, Saturday morning, I did not breakfast with him. I saw him, again, Saturday afternoon, a little after one o'clock.

He dined at home with us. After dinner, I did not see him, again, till towards evening. I do n't know about the afternoon, as I was not at home, myself. I did not see him till dark; at tea-time. I did not see the Evening Journal, that night, but a neighbor takes the Transcript, and it was Father's practice to step in and borrow it. He stayed at home, that evening, reading aloud and playing whist with us. This was not one of the evenings, when Judge Fay was at our house; but Miss Hodges took tea with us. I remember seeing Father come from his study to the tea-table. I am certain, that he was at home during the evening. We went to bed about ten o'clock; and I saw him at home, and up, then.

Sunday morning, I do n't remember seeing Father, until I saw him at church; at the College chapel. After church, he went to take a walk with my mother and sister, and returned to dinner, at half-past twelve. We generally dine at one, on Sundays; but dined earlier, that day, in order that he might go to Boston, and inform Dr. Francis Parkman, of his having seen his brother, the Friday before. After dinner, he went into town. I knew of his intention to go, in the morning. Something was said, then, about it, but I did not know the object of his going, till after dinner. I cannot call to mind, seeing him, again, that evening, after he returned from town.

Father dined at home, on Monday. He came home, just at dinner-time, which is two o'clock, P. M., on week days. He was not at home, after dinner. I saw him, at tea, but think, that he was away during the afternoon. He was at home in the evening; spent the whole evening with us. We had a friend visiting us, in the early part of the evening, and Judge Fay called in and played whist. I went to bed, about ten o'clock. Father was then in, and the rest of the family up.

On Tuesday, Father was at home, at dinner, and a little while after dinner. I don't recollect, as to the afternoon, beyond that. He was at home, at tea, and during the evening. I saw him at home, between ten and eleven o'clock. I left him up, at that time, when I went to bed. That evening we played whist among ourselves; and there was a fire, in the direction of Porter's hotel. I remember his being at home, when there was the alarm of fire.

Father generally breakfasted with the family. On Wednesday, I saw him, at about eleven o'clock, in the forenoon. He came into the house, at that hour. I was in the dining-room, reading a book, and he came in and made some remark about the book. He went out into the garden, to

trim the grape-vines, and worked there till dinner-time. He dined at home; and remained at home, till twenty minutes after six, when he came into Boston with us, to a family party, at Mr. Cunningham's. We left Mr. Cunningham's, at half-past ten o'clock, and took the eleven o'clock hourly to Cambridge. I left him up, when I went to bed that night, sitting in his dressing-gown and reading a newspaper.

Thursday, Thanksgiving-day, Father was at home; he did not come to Boston. So far as I know, he spent the most part of the morning in the garden. We spent the evening at home. I retired about ten, and he was at home, then.

I recollect first seeing him, on Friday at dinner. He was at home about a half an hour after dinner; and then, again, at sunset; also, a part of the evening, till his arrest.

I have a married sister, abroad, at Fayal. There is a pretty constant intercourse kept up between our family, and the family there. We keep a journal of all the passing occurrences, from which we write to our sister there. It is from this journal, that I have refreshed my memory, in regard to the facts, which I have testified to. My father frequently sends things to Fayal: frequently sends plants put up in air-tight boxes. I know that he intended to send some, this winter; but cannot say, whether he had made any preparations towards it. My father has also had corals sent him from Fayal.

Cross-examination, waived.

Harriet P. Webster, *sworn, — examined by Mr. Sohier.* I am a daughter of Dr. Webster.

On Friday, the 23d of November, I saw my father, between half-past five and six o'clock in the afternoon, at home, at tea. He remained at home till eight o'clock, when he accompanied us to Mr. Batchelder's. Mother and he went on to Mr. Treadwell's. We got home, from half-past twelve to one o'clock, when I saw him, again. He opened the door for us, and sat up half an hour with us. He went up stairs, at the same time that I did, to go to bed.

Saturday, the next day, I saw him at one o'clock in the afternoon, and afterwards, at dinner, at two o'clock. He spent the afternoon at home, till about dark, when he went out for about a half an hour. When he came back, he brought home a new book with him. He spent the evening with us, reading aloud from the book which he had purchased, an illustrated edition of Milton's L'Allegro and Il Penseroso. Miss Hodges was at the house, and we afterwards played whist. I can recollect till ten o'clock that night, when I retired, leaving him up.

I saw him Sunday morning, about breakfast-time, or shortly after. He went to church, and was at home at dinner. After dinner, he went into town, to inform Dr. Francis Parkman of his interview with his brother. I had heard him mention his intention in the morning; but Mother dissuaded him, and he put it off till afternoon. I recollect seeing him, again, in the evening, but do n't remember at what time. It was after ten, that I retired; and I think that I left him up.

I first saw him, on Monday, at dinner-time. I do n't remember seeing him in the afternoon of that day. He was at home in the evening. Miss Wells and Judge Fay were there, and we played whist. I retired before Judge Fay left.

On Tuesday, I saw him at dinner-time. I do n't recollect seeing him, again, till tea-time. In the evening, he read aloud part of the time, and a part of the time he played whist.

Wednesday morning, I breakfasted with him. I saw him, again, about eleven o'clock. He spent the rest of the forenoon in the garden. He was at home in the afternoon; and, about six o'clock, came into town with my two sisters. I did not sit up for them to return.

Thursday, he passed the day at home. In the fore part of the day, he worked in the garden. He spent the evening with us, and read aloud during a part of it. The family were all at home. We had music and reading.

On Friday, he dined at home; and I saw him, again, about five o'clock in the afternoon. He took tea at home. I think that I breakfasted with him in the morning.

There were quite a number of Father's things sent out to Cambridge, by Professor Horsford, on new year's day, from the laboratory in Boston. Among them, were a cap, one or two coats, a pair of overalls, and one or two pairs of pantaloons. This was after his arrest.

Cross-examination waived.

Ann Finnigan, *sworn, — examined by Mr. Sohier.* I live in Dr. Webster's family, as a domestic. I went to live with him, the 16th of November last.

The Doctor usually breakfasted from half-past seven to eight o'clock in the morning. His usual dining-hour was two o'clock, P. M. I had been there a fortnight, when he was arrested. On Wednesday, the day before Thanksgiving, the Doctor was at home earlier than usual. He came into the kitchen at twelve o'clock, and I was frightened, thinking that it was dinner-time, or two o'clock. I looked up to the clock, and took notice of the time, in consequence. He took

the key to the ladders off a nail, and went out into the garden with it.

I know that the Doctor breakfasted at home every morning while I was there, before his arrest. I first missed him, the morning after.

Cross-examination waived.

CATHARINE P. WEBSTER, *sworn, — examined, by Mr. Sohier.* I am a daughter of Dr. Webster's. Father returned home, Friday, the 23d of November, between half-past five and six, in the afternoon. Before tea, he sat in the parlor with Mother, and, after tea, he accompanied us to Mr. Batchelder's. I saw him again, between half-past twelve and one, at night. We all retired about one o'clock.

Wednesday, the day before Thanksgiving, I saw Father soon after breakfast. He came home, again, between eleven and twelve in the forenoon, and went into the garden to work, before dinner. He was at home till half-past six in the afternoon, when he came into town, to Mr. Cunningham's, with my sister and myself. We took the eleven o'clock omnibus for Cambridge. While waiting at the toll-house, I noticed the hand-bill, offering a reward for the discovery of Dr. Parkman. My sister pointed it out to my father, and he read it aloud, as it was pasted rather high up, above our reach.

On the Sunday before this, after breakfast, I recollect seeing Father, with his shoes in his hand, preparing to go to Boston. He was going in, to tell the Rev. Francis Parkman, that he was the person who had made an appointment with him on Friday. Mother advised him to wait till afternoon, and he stayed till after dinner. I recollect seeing him at church, and took a walk with him after church. I heard his voice in the entry, again, about dark; and saw him afterwards in his study, between nine and ten o'clock. He came into the parlor, and was with us till nearly eleven, when I retired.

Cross-examination waived.

WINSLOW LEWIS, JR., *called a second time, — examined by Mr. Sohier.* I have been acquainted with Dr. Webster, for about thirty years. We have mutual acquaintances. I had supposed that his reputation had always stood fair, as a man of humanity and kind feelings. I should say, that he was very far from being esteemed a man of violence.

When he was at the Mason-street College, many years since, he used to lock his doors, against intrusion. I have often found difficulty, there, in gaining admission to him. I

was at that time Demonstrator of Anatomy, and he a professor, as at present.

[Mr. Sohier now proposed to inquire of Dr. Lewis, in regard to the character of the cut under the ribs, in the remains. The Attorney General objected, that the inquiry should have been made upon cross-examination. But the Court permitted the testimony to be given, as new matter, or, as subsequent to the examination of Dr. Strong.]

I took very special notice of the cut under the fifth rib, in the remains, at the Medical College, and am sure that it was anything but a clean cut: it had a ragged opening. It would not necessarily follow, from its being a clean cut, that it was made before death.

I could not form a reliable opinion, whether the bone of the head had been broken, before, or after, calcination, from its appearance.

We finished the more important details of our examination of the remains, on Sunday. Dr. Strong saw them afterwards. We had agreed on the substance of our report, Sunday. There was an appearance of bloodlessness about the lower limbs; but I think, that, that was owing, solely, to their having been soaked in water; and so stated, in the report. This was true of the pelvis, more than of any other part.

To the Attorney General. — I do not profess as intimate an acquaintance with osteology, as Professor Wyman; and should defer to his opinion, upon the point of the fracture of the calcined bone, before, or, after death.

There is greater probability of a clean cut being made before, than after, death; for, the membranes of the ribs are then more tense.

To Mr. Sohier, again. — The intercostal muscles, however, retain a great degree of tension for a considerable period after death.

George H. Gay, *called a second time, — examined by Mr. Sohier.* We finished the examination of the remains on Sunday. I think, that I saw Dr. Strong at the College, on Monday. The cut referred to, was a ragged cut. My impression at the time was, that it was made with a cane. A clean cut can be made after death, as well as before. I thought, that the parts of the body, which came from the privy, looked as if they had been soaked, or macerated, in some liquid.

No cross-examination.

Oliver W. Holmes, *called a second time, — examined by Mr. Sohier.* There are two leading authorities, on the subject, of the quantity of blood there is in the human body; Haller, and, Valentine. One says, that it is one-fifth of the weight of the whole body; which, in the instance of a person weighing one hundred and forty pounds, would make twenty-eight pounds. The other states it, at from one-fifth to a quarter; which, in the case before supposed, would give from twenty-eight to thirty-five pounds. This last quantity, would probably measure something less than seventeen quarts.

The condition of a fracture of a bone after calcination, would depend upon the degree of calcination. If the calcination had been very complete, the bone would easily crumble. If only partially calcined, the bone might split and break in any direction. In either case, one could not give a very reliable opinion upon the point, whether the fracture was before, or after, calcination. Such, at least, has been the result of my observations.

To the Attorney General. — Upon this point, I should not defer to the opinion of Professor Wyman. It is a simple physical fact, open to the observation of any one. I have examined the piece referred to, by Professor Wyman, and cannot see any sufficient reasons for deciding whether the fracture was before, or after, calcination. This is giving an opinion, if you please, of *my* opinion, not of *his*.

Eben N. Horsford, *sworn, — examined by Mr. Sohier.* I am an instructor in Chemistry in the University at Cambridge, in the Lawrence Scientific School. I have delivered part of the course of chemical lectures at the Medical College, in this city, since Dr. Webster's arrest. I instructed in the subject of chemistry, in 1841, and have pursued the science, since.

I have the nitrate of copper in my laboratory, and have seen it in others. It is used for a variety of purposes, by the chemist; in organic analyses, for instance. I should not consider it the best article to remove stains of blood.

I have made some experiments, to see how shortly bone and flesh can be dissolved with nitric acid and potash. I made the experiment upon the bone and flesh of a hock-joint of beef, each, by itself. The parts were treated separately, the bone in one vessel, and the flesh in another, with commercial nitric acid. Being kept in a temperature a little below boiling, the bone had disappeared, (all, except a very

few small pieces,) in four hours and twenty minutes; and in five hours and twenty minutes, not a vestige of it was to be seen. The flesh disappeared in three or four hours, so that the liquid was perfectly clear. I have, also, tried the experiment of dissolving human flesh. It took less time than the beef. I have not made any experiments in dissolving human bones.

I occupied Professor Webster's laboratory after his arrest. I found salts of copper there. These salts, or solutions, might be wanted for Sanctorious thermometers, such as I saw there. I also saw copper solutions in two other vessels.

Human blood is not infrequently used for chemical experiments. I have had no experience in testing the age of blood, when found in a dried state.

I have never experimented upon the gases found in anatomical vaults. There are gases generated in such places.

After Professor Webster's arrest, I sent out various articles of clothing from the laboratory, to his house at Cambridge. There was an old blanket, — perhaps, more than one; two pairs of pantaloons, I think; one or two coats; a pair of blue overalls; and a light-colored summer cap. I sent them out about the first of January, I believe. I examined the overalls, very cursorily, at that time; but have since looked at them, with more care, and can find no trace of blood upon them. To all appearance, they were in the same condition at the time of this last examination, as when I first saw them.

Cross-examined, by Mr. Bemis. I found the overalls in the small private room. They were in plain sight, and, I think, had been used by the policemen for a pillow.

When I took the laboratory, I found four or five bottles of nitric acid, containing, all together, from a gallon to a gallon and a half. The whole quantity, in weight, (which would depend somewhat upon its concentration,) might be from thirteen to sixteen pounds. The quantity requisite to dissolve a human body, with the greatest rapidity, I should fix, at something more than the weight of the body itself. The best vessel to contain the acid, I should think, would be an iron one, lined with porcelain. If made simply of metal, it would be acted upon by the acid. There would be no necessity of having it covered, unless the temperature were raised very highly. No noxious gas was given off in the experiments which I tried. I saw no apparatus at the laboratory, capable of holding a hundred and fifty pounds of nitric acid, or thereabouts, if so much had been wanted for use, for any purpose.

I did not examine the spots on the stairs, to see what

caused them. Nitrate of copper is not unfrequently spilt about, in a laboratory. It might affect the clothes, so as to spot them or make holes in them, and would slowly corrode the skin.

In my experiment, I used four pounds of bone, and six pounds of acid; but I used rather more acid than was necessary, owing to the shape of the vessel not being accommodated to that of the bone.

I should not think that nitric acid would operate to dissolve mineral teeth; though I have not tried the experiment.

Direct, again. — It is not impossible, to use nitric acid, in an iron vessel, for the purpose of dissolving human flesh. Flesh, itself, very quickly loses its identity in the acid.

I have never known any thing to the contrary, of the defendant's being a man of kindness, mildness, and humanity.

William T. G. Morton, *sworn, — examined by Mr. Sohier.* I am a physician; practise Dentistry, and have done so, for about eight years. I usually manufacture the mineral teeth, which I have occasion to use.

I have had an opportunity of seeing and becoming acquainted with Dr. Keep's mode of making his mineral teeth. I was instructed in it some five years ago. [The teeth identified by Dr. Keep were here shown to the witness, by Mr. Sohier, and he was asked to state any means of identification which he could discover about them.] I see no particular marks about these teeth, by which to identify them. I should think, that, nothing could be judged from the material. I should say that they had been ground after being finished; but this is, by no means, an unusual thing. We usually do it, upon a small wheel, of a size from a fourpence-ha'penny piece, to a dollar.

I have used platinum pins; and so do others. It is a common material with which to attach the teeth to the plate. The holes in these blocks are placed at the common points. There are rules in the treatises on dentistry for their position.

I see nothing peculiar in the absorption of the lower jaw, as indicated in, what is said to be, the plaster-cast of Dr. Parkman's lower jaw. I see no particular absorption of the alveolar process. My impression is, that if it were placed among a dozen others which I can produce, I should not be led to pick it out, from any peculiarity in that respect. The absorption is greater than exists in some, and less than is to be seen in other models.

I don't think that the teeth, as they now are, fit the blocks

with any great degree of exactness. I have a block, a refuse block of my own, which fits the right side of the cast of the lower jaw of Dr. Parkman. As far as it extends, it fits as perfectly as I could make it.

[The witness here produced several plaster-casts of jaws, and also several natural jaw-bones, exhibiting unusual absorptions of the jaws; differing, however, as to the shape of the absorption, from that of the model produced by Dr. Keep.]

Dr. Morton, resumes. — The teeth remaining in the model of Dr. Parkman's lower jaw, are those which usually last the longest; such as I should most expect to find in a person of his years. I do not consider the projection of the lower jaw, a remarkable one. Among *these* casts, [referring to those previously produced,] are some taken from persons now living, which have as great, or even a greater projection than his. All dentists have more or less of these cases in their practice.

[Mr. Sohier here exhibited to the witness the left lower block of the teeth taken from the furnace, and asked him what marks it bore, of having been fitted originally to Dr. Keep's model; or what means of identification, this latter afforded, from any supposed conformity or similarity?]

Witness, again. — If the block shown to me did not appear to have been fused, or to have had an opportunity to warp, I should say that it might have been made on this model, as probably as upon any other, and not more so; but, as some of the accompanying blocks seem to have warped so as to fall over, I should think that there was a liability of this having warped out of its original shape, and so into a shape to fit the mould.

Cross-examined by Mr. Bemis. — I knew Dr. George Parkman. I don't know how to answer your question, "whether his jaw was a peculiar one." No two jaws are alike, though there is a general resemblance among all jaws. I never saw a person's that his could not be distinguished from; yet I have seen many persons whose under jaw projected as much as his. I could identify individuals among my patients, who have as prominent a lower jaw as his, but prefer not to do so, from motives of professional delicacy.

Perhaps, these teeth, [those taken from the furnace,] might be capable of identification, if they had not been subjected to the action of heat. I can identify my own work in many cases.

Mr. Bemis. — Did you ever see a set of artificial teeth made for one person's jaw, that would fit another's?

Dr. Morton. — *The teeth* might answer for another person's jaw; perhaps, *the plate* would not.

Chief Justice. — Take a complete set, sir, fitted to the plate.

Witness. — I never saw a set thus complete, made for one person, that would answer for another; the case might happen; once, in a thousand times.

Mr. Bemis. — Would the difficulty be enhanced, in attempting to find a set that would fit both jaws in connection? — I mean, that would fit, both upper and lower jaw, and at the same time conform to the adaptation of the two jaws to each other?

Witness. — Certainly, there would be very much less likelihood of finding such a coincidence in all these respects, at the same time.

The most prominent specimen of absorption among the casts produced by me, is that of a person about fifty-five years old. The absorption has taken a different shape, in this instance, from that of Dr. Keep's model of Dr. Parkman's mouth. The absorption on the right side, also, is not coincident with that of the right side of the model.

If I should discover an agreement between a number of blocks of teeth, found as these are said to have been, and plaster-casts of a set of teeth showing a peculiar conformation of the lower jaw, and a peculiar connection of the two jaws, I should certainly say, that it was a remarkable coincidence. If I had worked a long time upon a set of teeth belonging to a peculiar-shaped jaw, and had taken impressions of the jaw, I could probably identify my work, if the interval had not been too great since the work was done.

Direct, again. — When I spoke of not knowing anything peculiar, about the shape of Dr. George Parkman's jaw, I meant to speak with reference to its prominence. I mean to say, also, in regard to fitting one set of teeth made for one person's mouth to another person's mouth, that though the whole set might not fit, there is no difficulty in finding particular blocks to fit.

To the Chief Justice. — The impression taken of a jaw in wax, and afterwards preserved in plaster, for the purpose of making a set of mineral teeth, is a perfect *fac simile* of the outline of the jaw, with its absorptions and cavities; and this is necessary for the dentist's purpose.

To Mr. Sohier, again. — It is a model of the gums, with the flesh on, and not of the bone itself. I should think,

therefore, that there might be a considerable difference between such a model, and the naked bone.

DANIEL TREADWELL, *recalled, — examined by Mr. Sohier.* [It was stated that a part of this witness's testimony had been accidentally omitted.] I remember the day of Dr. Parkman's disappearance. I live in the neighborhood of Dr. Webster, at Cambridge, and saw him, on that day, Friday, Nov. 23d, at my house, at about half-past eight o'clock. He called with his wife. Dr. Morrill Wyman and wife, and Mrs. Treadwell and myself, were present when they entered. Judge Fay afterwards came in. A general conversation ensued, on a variety of topics, and Dr. and Mrs. Webster left, at about ten o'clock.

Since his arrest, I have endeavored to recall the particulars of the interview, but can recollect nothing unusual. He conversed upon any subject that was introduced, and appeared cheerful, and perfectly self-possessed; there was nothing like distraction or absent-mindedness in his manner. I am familiar with his usual demeanor.

I saw Dr. Webster, twice, in the course of the ensuing week. The first time, was Tuesday evening, between his house and the Unitarian church in Cambridge, near the burying-ground; this was as late as six o'clock, or after. I had taken tea, and was walking down town. It was at a spot where I very frequently met him, on his return, evenings, from the city. We stopped and had a moment's conversation together. I met him again, on some other occasion, but cannot say, when. At both interviews, I noticed nothing unusual in his demeanor. We talked of Dr. Parkman's disappearance, among other things, and he spoke of it in his usual manner; perhaps, with some animation, but not differently from what he would of any other passing subject which excited interest.

Cross-examined, by Mr. Bemis. — I am quite confident, that, on the first occasion, Tuesday, he was going towards his own house. It was fully as late as six o'clock. He did not speak of having been at the book-store. On this occasion, or the other, after we had spoken of Dr. Parkman, he pointed up to a star, that was particularly bright, and asked some question in regard to it.

It being now two o'clock, P. M., the Court adjourned to half-past three.

Afternoon Session. — Thursday, March 28th.

The Court resumed its session, at the usual hour.

James W. Stone, *recalled. — examined by Mr. Sohier.* The hole under the rib, in the remains shown to us at the Medical College, was not a clean cut. There is no difficulty in making a clean cut, after death, so long as the intercostal muscles remain tense; no more difficulty, than for a butcher to make a clean cut of a piece of beef.

Philena G. B. Hatch, *sworn, — examined by Mr. Sohier.* I am the wife of Mr. Joseph Hatch, and reside, at No. 15, Vine street, in this city.

I knew Dr. George Parkman; and had known him for fourteen years. I last saw him, on Friday, the 23d of November, in Cambridge street, between Blossom and North Russell streets. I was going towards home, in the direction of Cambridge bridge, and he, in the opposite direction, towards Court street. The time of the day, was, a little before ten minutes before two o'clock. I looked at the clock when I got into the house, and it wanted either ten, or twelve minutes, of two.

I fix the day, by my husband's starting, the morning before, the 22d, on a journey to Vermont; and that same night, the 22d, my sister came to stay with me, from the State of Maine, on a visit. The next day, the 23d, I went up to the South End, to inform her daughter, my niece, of her arrival; and it was on my way back, that I met Dr. Parkman. I looked at the clock, to see how long I had been gone.

I recalled this to mind, the Sunday following, when I was told that Dr. Parkman was missing. I said, at once, that he could not have been missing long, for, I saw him, Friday afternoon. I mentioned the circumstance of my meeting him, to my sister, as soon as I got into the house.

Cross-examined, by Mr. Bemis. — I did not turn round to see what direction Dr. Parkman took, after meeting me; don't know, but that he, himself, turned directly round, and walked towards the Medical College: I was not his keeper. I mentioned it, to my sister, in order to cheer her up and make her smile, as she was rather gloomy, and because he was the only person, whom I had met, that I knew. I told my sister, that I had met *Chin*, in the street. I mentioned this, some time during the afternoon. She asked me, who

I meant; and I told her, Dr. Parkman. Everybody knows that he had a very large chin.

Dr. Parkman and I, were both on the same side of Cambridge street; the right side, as one goes towards the bridge.

JOSEPH HATCH, *sworn, — examined by Mr. Sohier.* I am husband of the last witness. I left the city to go to Vermont, on the 22d of November last, and did not return, till the 3d day of December.

No cross-examination.

WILLIAM V. THOMPSON, *sworn, — examined by Mr. Sohier.* I reside at East Cambridge; am clerk in the Registry of Deeds.

I went to Professor Webster's house, on Sunday evening, November 25th, in company with Mr. Fuller, the officer; should think, that it was about six o'clock, when we started. We went to ascertain the date of a mortgage. We found Professor Webster at home, and were shown into his study. I asked him, if he recollected about the time, that he gave the mortgage to Dr. Parkman. He said, that, if we would wait he would tell us. He looked into a trunk on the floor, and made a remark, that it was strange that he could not find the papers. He then said, that he could give me the information, another way, and read a few extracts, from, what I supposed to be, his journal. He gave me the date of a mortgage, and then said, "But, I suppose, that, that is not the one you want." I told him, that I wanted the date of the one upon which he had paid the money, the Friday preceding. He gave me the date, &c., and I said that I would call on Mr. Paige, the City Clerk. It turned out to be a mortgage on personal property, and not on real, as we had supposed; and I saw that it was necessary to apply to the City Clerk. There was nothing else of importance, in relation to the mortgage; or, rather, there were two mortgages, of which I took a minute. There was considerable other conversation, to which I did not pay attention.

In the course of the interview, Dr. Webster said that he had been over to see Dr. Francis Parkman, and tell him that he was the person who was to meet his brother. He also said, that on his return, he had asked the toll-man if he saw Dr. Parkman come over the bridge to Cambridge, as he had understood that he did; also, that he had called on Mr. Paige, the City Clerk, to see if the mortgage had been cancelled. He said that he did not find Mr. Paige at home, as he was

not aware that communion-day in his church came on the last Sunday of the month, instead of the first; and, so, that he was detained: that he had ascertained from him, that the mortgage was not discharged. I made the observation, that we would call at Mr. Paige's, ourselves, and make the inquiry for our own satisfaction, as we returned home; that Mr. Paige might have overlooked the cancellation, by mistake. I then left the house.

I saw nothing peculiar about him, except his giving me the date of the wrong mortgage. I did n't notice any trembling. I had a good deal of conversation with him; a part of the time, was making minutes of the dates, &c., which he gave me.

To the Chief Justice. — The first mortgage which he gave me the particulars of, was the large one. I made minutes, as he read.

Mr. Thompson, resumes. — I was acquainted with Dr. George Parkman, and had known him, ten years. I had seen him very frequently, during the last five years. I saw him last, on Friday, the 23d of November, in Causeway street in this city. I should think that it was ten or fifteen minutes past two o'clock in the afternoon. I was going down the street, towards Charlestown, and he was coming up, towards Leverett street. We met a little below the middle part of the street. On one side of the street there was a milliner's shop, and on the other, a carpenter's shop. I was going down on the left hand side, and he was coming up, on the opposite side. It was somewhere near Portland street.

I fix the day, because I paid for this coat, which I now have on, on that day, and I also made an abstract of a title for a merchant in India street, which was paid for, that day, and of which I have the copy of the receipt which I gave. I had not been in Boston, before, for nine days.

To the Chief Justice. — I made the examination of the title at the Registry-office in East Cambridge, and was on my way to the merchant's store in India street. When I went to the store in India street, I did not find the gentleman in, and at the request of his clerk, put in writing, what I wished to communicate to him. He paid my bill, and I gave a receipt, of which I took a copy.

Direct, resumed. — I started from East Cambridge to walk over, at three or four minutes of two, according to one clock. — By the clock on the Court-House, it was just two. The first place that I called at, in Boston, was the store of Orr N. Towne, at the corner of Elm and Hanover streets. I stopped

there to leave some deeds. I took out my watch to see the time, and found that it was twenty-three to twenty-five minutes past two. This was after I met Dr. Parkman. I had walked in from East Cambridge, through Leverett, Causeway, Merrimac, or Portland, streets, to Mr. Towne's, at a quick pace.

I noticed Dr. Parkman's appearance, when I met him. He was dressed in a dark frock-coat, dark pants, and dark hat. When I saw him, he had his hands behind him, and appeared excited, as if angry about some matter. I did not turn round to look after him. He was walking, at the time. I recalled this to mind, on the Sunday following, and so stated it to Mr. James H. Blake, at about five o'clock in the afternoon.

Cross-examined, by Mr. Bemis. — I never use spectacles. I do n't think that I am near-sighted: nor am I aware that others consider me so. Some parts of the day, my eyes are weak, and I use glasses which are slightly colored. My occupation is mainly that of copying. I suppose that it tends to weaken my eyes, but not to impair my sight. The broadest part of Causeway street is opposite Lowell street. Where I met Dr. Parkman, in Causeway street, I should say, was at the corner of the first street turning off at my right: I should think, Lancaster street. It is not Merrimac street. [Witness was here asked to point out the locality, on a map of the city. After some considerable examination of the map, he found it difficult to identify the locality.] Looking at the map, I should now say, that it is Merrimac street. This is higher up than Lowell street.

I do not carry a magnifying-glass for my own use. I have one with me, now, which I sometimes use for the purpose of examining fine writing. I sometimes write in a very fine hand; but have never written so finely at one time, that I could not read it at another. I have never made any statement to any one, that I could do so. I will not say, positively, that I have not, though I think that I have not.

Mr. Bemis. — Have you never told any one, that you could write so finely in the mesmeric state, that no one else could read it, in the natural state?

Witness — (with emphasis.) — No, Sir.

Mr. Bemis: — Have you never said anything about writing in the mesmeric state?

Witness. — *No, Sir.* I never use the term *mesmeric.* I may have said something about the *biological* state. I sometimes lecture on biology.

Mr. Bemis. — Well; what have you said about writing in the biological state?

Witness. — I may have told your informant, Mr. Andrews, that I could write a very fine hand in the biological state. I never told him that I could write so finely, in that state, that I could not read it in my natural state. I may have told him, that others could not read it without a glass. I simply carried the glass for others to use, not for my own satisfaction. I do not pretend to say, that I have a better sight at one time, than at another. I do not pretend to say, that I can see better in the biological state than in the natural. Mr. Andrews said that he had seen some very fine writing of mine done in that state, and spoke as if he wanted to get some information upon the subject.

[Mr. Sohier objected to the mode of cross-examination pursued. Messrs. Clifford and Bemis contended that the inquiry as to the strength or kind of vision possessed by the witness, was material and pertinent. The Court ruled that the line of inquiry was competent.]

Mr. Thompson, resumes. — I do not know whether my power of vision is augmented in the biological state, or not; nor, whether I can see better in that state, at a distance. I never use a glass to aid me to see distant objects. Dr. Parkman did not speak to me, when I met him in Causeway street, as I have mentioned; and he did not bow.

There was some further conversation at Dr. Webster's house, Sunday night, besides what I have related. I asked Dr. Webster, how Dr. Parkman appeared, when he paid him the money. He replied, that he seemed angry and excited. He also informed me, that Dr. Parkman had called on Mr. Pettee, the gentleman who sold his tickets for the lectures, and inquired if he had any money in his hands belonging to Dr. Webster: that Mr. Pettee told Dr. Parkman, that he had some of his, (Dr. Webster's,) money in his hands; and that Dr. Parkman urged him to pay it over to him, and he would give him his receipt. Mr. Pettee, he said, refused: and Dr. Parkman was thereupon very angry, and used an expression, that Professor Webster was a d—d whelp.

I did not state this, before, because I was interrupted by the counsel for the defence. I did n't mean to be understood, that I had repeated the whole of Dr. Webster's conversation, Sunday evening, when I was on my direct examination. I *do* recollect something else that was said. When we went out, Dr. Webster followed us into the entry, and said, I trust that you will be successful in your search. He also said,

that he should be happy to render any assistance that he could.

This conversation was present to my mind when I was under the direct examination. I have always remembered it, and always so stated it.

[The Attorney General here put into the witness's hand a written memorandum, purporting to be signed by himself; and asked him, whether that was his signature, and whether it stated the facts truly.]

That is my signature and my handwriting. I made it at the request of Mr. Andrews. It is only a rough outline of what occurred at the Sunday evening's interview. Mr. Andrews said, that he merely wished a rough outline, — that he could n't wait for anything more; and he wished me to put it down in my own writing, as his hands were cold.

I think that Dr. Webster did speak, as I have stated there, of Dr. Parkman's disappearance creating great feeling in his family, and the community. I think he did also say, that Dr. Parkman had been very insulting to him, every time that he met him. He also said, as I have there stated, that he had told Dr. Parkman, that he would pay him when he got his money for the tickets to his lectures; and that Dr. Parkman said, that he would not believe his word. I cannot swear, that Dr. Webster said, that there were two persons present when Dr. Parkman paid him. It was only my impression at the time Mr. Andrews called on me, and I told him so. But he said, that I might as well put it down, and I did so.

Direct, again. — The Mr. Andrews I refer to, is Mr. John L. Andrews, who was the secretary of the coroner's inquest. He has since been employed in collecting testimony for the Government, I believe. He came to the Registry of Deeds, and inquired of me about the interview.

I told him, that either Dr. Webster said, that two persons, one of whom was the janitor of the College, were present, when the money was paid, or the moment before; or that, that was my impression of what he said. I told him that I could not swear to it; but he said, that I might as well put it down, and sign my name to the paper; and I did so. He said that he only wanted a rough outline. This was the only occasion upon which he called on me.

Samuel A. Wentworth, *sworn, — examined by Mr. Sohier.* I live in Vine street, in this city; am a provision-dealer. My place of business is at the corner of Lynde and Cambridge streets.

I knew Dr. George Parkman; had known him for two years. I last saw him in Court street, Friday, the 23d of November, between half-past two and half-past three o'clock in the afternoon. I fix the time, by my dinner-hour being one o'clock. I went to dinner, and returned, and then my young man went to his dinner, at two o'clock. I waited for him to come back to my shop, and after he returned, having been gone more than half an hour, I went down town, to get my marketing, for Saturday. I went towards Haymarket Square; and, when in Court street, nearly opposite the head of Sudbury street, I met Dr. Parkman, opposite Mrs. Kidder's medicine-store. He was on the same side of the street with me; and, after I had passed, he suddenly faced half round towards the middle of the street, with his hands behind him, and appeared to be looking up toward the tops of the houses opposite. I did not notice whether he left the side-walk. He was going towards Bowdoin Square, when he stopped.

I first called this to mind, Saturday evening, when I went home from my shop, about ten or half-past ten o'clock. My wife told me, that two men had been there to inquire about Dr. Parkman. I immediately made the remark, that "I guessed that he had n't gone a great ways, for I saw him in Court street yesterday afternoon."

After I had passed the Doctor, I crossed over the street, to go down Sudbury street, and it was then that I noticed him.

Cross-examined, by Mr. Bemis. — There was another lady present, who was staying at our house, when I communicated this to my wife. I also communicated it to a man by the name of Foster, Mr. Henry L. Foster, who lives in Blossom street, — after the remains were found. I did not mention it to the police. No new fact, in particular, called it to my mind, from the time I first mentioned it to my wife, till I spoke of it to Mr. Foster.

I can't be precise as to the time when I met Dr. Parkman. I should think, that it was about three o'clock; it must have been after half-past two. I am sure, that it was not Thursday; for I never buy my Saturday's marketing till Friday. There was a gentleman with me, Mr. Isaac H. Russell, who recollects seeing Dr. Parkman at some time, but cannot recollect the day. I did not mention the fact of seeing Dr. Parkman, out of my house, till I told it to Mr. Foster, the Saturday after the remains were found. I knew that the search was going on, for Dr. Parkman, in the mean time. The two men, who called at my house in Vine street, were

searching the houses in that street. I knew, also, that rewards were offered for the discovery of Dr. Parkman's body.

SAMUEL CLELAND, *sworn*, — *examined by Mr. Sohier.* I reside in Chelsea, but do business in this city, at No. 26, South Market street.

I was acquainted with Dr. George Parkman; was a tenant of his, in 1839. I last saw him, on Friday, the 23d of November, in Washington street, between Milk and Franklin streets, between a quarter-past three and half-past three o'clock in the afternoon: perhaps it was as near twenty minutes past three, as anything. He was on the east side of Washington street, going towards Roxbury.

I fix the hour, from my going up to see the Rev. George Wildes, that afternoon. I always called on him, (as he officiated occasionally for our church in Chelsea,) at three o'clock. He was boarding at No. 18, Franklin street. It was while I was on my way back from there, that I met Dr. Parkman. I know that the day was Friday, in this way. On Wednesday, the 21st, I addressed a note to the Rev. Mr. Allen, of East Boston, requesting him to officiate at St. Luke's church, in Chelsea, on the Sunday following. Not receiving any answer, Friday morning, I wrote another note to him, and sent it by a boy, to East Boston. The boy returned, and said that he could not find Mr. Allen. He brought back the note, and I preserved it, and now have it in my pocket. About eleven o'clock, I addressed a note to the Rev. Mr. Woart, of Christ church, asking him to preach for us, and sent a boy with it. He returned with an answer, which I now have in my pocket, stating that he could not preach all day, the next Sunday.

I then waited till three o'clock, in hopes of seeing Mr. Wildes. I remember, distinctly, leaving my store at three o'clock. I went up through Devonshire street and Theatre alley, to Franklin street, and found Mr. Wildes in. I spent a few minutes with him, and started to come back again to the store, through Washington street. In coming down Washington street, I saw Dr. Parkman. When I first noticed him, I thought that he was walking with a laboring man, and that attracted my attention. On getting nearer, however, I saw that I was mistaken, and that he was alone. We passed on the same side, nearly touching each other. I did not speak to him, as I have not done so, for several years. I first heard of his disappearance on the Monday following.

Cross-examined, by Mr. Bemis. — I first communicated

the fact of my meeting Dr. Parkman, to my partner, on Monday morning, when he read the notice of his disappearance, from the newspaper. I do not know, whether the information was in any way communicated to Dr. Parkman's family, or the City Marshal. My reason for not mentioning it, was, that I met Mr. Knapp, the Clerk of the Police Court, and told him of it, and he said, that it was unnecessary to speak about it, as Dr. Parkman had been seen at a later hour at the South End. I saw the advertisement, offering a reward, in Monday's papers, I think; but took no pains to spread the information, in consequence of it. I should have been happy to have made it known to his family, if I had thought it important.

I cannot fix the exact place in Washington street, where I saw Dr. Parkman. I should think that it was half-way between Franklin and Milk streets. The street was not much crowded at the time. He might have been four or five rods off, when I first noticed him. I was on the inner side of the side-walk, and he, on the outer. I do not know that he varied his direction as he approached me. There were persons between us, at first. He was walking at his usual pace.

I am not aware of having made any statement about the occurrence, to Mr. Lee, the superintendent of the Providence railroad; I may have conversed with him about it. I was not aware of any advertisement, requesting notice to be given to the police, of any information about Dr. Parkman.

[The witness produced the notes referred to in his testimony, and the counsel for the defence offered them to the counsel for the Government, for their inspection; and, if they consented, to go into the case, as testimony. But their relevancy not being admitted, no further action was taken upon them.]

Lucius R. Paige, *sworn*, — *examined by Mr. Sohier.* I am City Clerk of the city of Cambridge; and, as such, keep the records of the mortgages of personal property in that city.

I saw Dr. Webster, at my house, on the Sunday succeeding the 23d of November last, at about a quarter before five o'clock in the afternoon. I was not at home when he called, but found him there, on my return from church. He stated, that he had called to see if Dr. Parkman had been there since Friday noon, to discharge a mortgage. I replied at once, that I knew Dr. Parkman, and that I was very sure that he had not been there. I keep my office at my house. I think, be-

fore he left, that I went and ascertained that the mortgage had not been discharged.

No cross-examination.

ABBY B. RHOADES, *sworn, — examined by Mr. Sohier.* I reside in Minot street, in this city.

I knew Dr. George Parkman, enough to bow to him; had known him twenty-five years. I last saw him, on Friday, the 23d of November, in Green street, near the corner of Lyman Place, and in front of Emery Souther's apothecary shop. I think that it must have been about a quarter before five o'clock in the afternoon, just before dark. There was another man with him. I was on the inside of the side-walk, and my daughter, who was walking with me, was between me and the Doctor, as he passed us, as near as he could. We were going towards Chambers street, and Dr. Parkman towards Bowdoin Square. We bowed, — that is, Dr. Parkman and myself, — as we passed. I do n't know which bowed first.

I fix the day, because there was no other day, that week, when my daughter and myself went home together through Green street. We had been out shopping, and made some purchases; among others, at Mr. Hovey's store, in Winter street. After leaving Mr. Hovey's store, we went into Hanover street, my daughter taking the bundle with her. The purchase which I made at Mr. Hovey's, was of eleven yards of muslin de laine, at twenty cents a yard, coming to $2.20. I paid for it, at the time, so that no charge was made against me, in my name. I have been there since, and ascertained that there was an entry made that day, on their books, of that amount of cash received, for that kind of article.

I have taken the greatest pains to be sure of the day. I know that I was at home the next day, Saturday, all day. The day before, Thursday, I was at home also, all day. I communicated my recollection of meeting Dr. George Parkman, to his brother, the Rev. Dr. Francis Parkman, on the Tuesday following. I first heard of Dr. Parkman's disappearance, Sunday morning; — seeing it in one of the newspapers. My daughter first recalled my attention to the fact of having met him, on Tuesday. She went out to Lexington, on Saturday, and returned, Tuesday. There was some conversation at dinner, about the Doctor's disappearance, and she asked me, if I did n't remember meeting him in Green street, Friday, when he bowed to us; and it then occurred to my recollection, immediately. I have a memorandum of my purchase, at home. I cannot be mistaken in the day.

I remember all my engagements that day, before and after meeting him. I did not go out, until after dinner, between two and three o'clock. I did my shopping, and I was on my way home, when I met him.

Cross-examined, by the Attorney General. — I have been a parishioner of the Rev. Dr. Francis Parkman, and felt a great interest in the matter of his brother's disappearance. I asked my son some question about it, on Tuesday, at dinner, which led to my daughter's asking me the question which I have mentioned. I have never expressed any doubts or misgivings about the accuracy of my recollection. I have not done so, to Miss Patterson, that I am aware of. I have talked with her about it, but do not recollect saying anything of the nature of my doubting my memory. If I have, I did n't mean to do so. I never told Mrs. Harrington, my sister, "that if I had n't said so often that I had seen Dr. Parkman, Friday, I should n't feel confident of it now."

I do n't remember, or did n't know, the gentleman who was walking with Dr. Parkman. It was not Dr. Webster. He was somewhat taller and stouter than Dr. Webster. I do n't know whether they were talking together. They passed so quickly, that I could not see. I do n't recollect what the weather was, that afternoon.

I called on Dr. Francis Parkman, the Friday after my first call, to tell him of a report about a man's being seen at Chelsea. I did not call for the purpose of repeating my statement, "that I only recollected it, Tuesday, upon my daughter's mentioning it."

Mary Rhoades, *sworn*, — *examined by Mr. Sohier.* I am daughter of Mrs. Rhoades, who has just testified.

I knew Dr. George Parkman, by sight, and had known him nearly ten years. I saw him last, on Friday, the 23d of November, in Green street, opposite Mr. Souther's apothecary shop. My mother was with me. We had come from Mr. Hovey's store, in Winter street. Dr. Parkman was walking with another gentleman, and bowed to Mother as he passed. He was nearer to me than to my mother, and I had to move my bundle to avoid hitting him. The bundle was some de laine, which we had bought at Mr. Hovey's.

I went to Lexington, Saturday, and heard of Dr. Parkman's disappearance, there, the same day. I first mentioned my recollection of seeing Dr. Parkman, to my mother and brother, Tuesday. I did not mention it to any one, before coming to Boston. I have taken a great deal of pains to fix

the time when I saw Dr. Parkman. The hour was between half-past four and five, I should think; near dark.

Cross-examined, by Mr. Bemis. — I did not mention this fact at Lexington. I heard no discussion, there, about it. The gentleman, where I was staying, read the advertisement aloud from the newspaper, to the family. I thought it related to his disappearing that same day, and so it did not attract my attention. I heard nothing more said about it till I came into town, Tuesday, and mentioned to nobody in the mean time that I had seen him. I did not inquire, myself, when I came to town, whether Dr. Parkman had been heard of. I don't know whether my mother said anything about a reward being offered for him, before I told her, that we had met him, Friday.

The gentleman walking with Dr. Parkman, was a stout man; not so tall, as Dr. Parkman. He was dressed in a dark surtout. I don't recollect the streets through which we returned from Mr. Hovey's. I was out in the street, before, that week; but there was no other day on which I came home through Green street, with Mother, except Friday. I *went* through that street with her, Wednesday; but *returned* through it, alone. I don't recollect whether I saw Dr. Parkman, in Green street, Wednesday, or not. I used to meet him, frequently, in the streets; almost daily.

SARAH GREENOUGH, *sworn, — examined by Mr. Sohier.* I reside in Cambridge.

I knew Dr. George Parkman, personally, for many years, in early life; but have only known him by sight for a few years past. I saw him last, as I believe, on Friday of the week before Thanksgiving. It was in Cambridge street, in this city, between Belknap and South Russell streets. It was about ten minutes before three o'clock in the afternoon. I had an engagement at tea, and I wished to be at my son's house before three o'clock, at which hour he was in the habit of leaving it. I had the horse harnessed, and was brought down, from my house in Cambridge, to the bridge, and then walked over the bridge, thinking that I should have time to get to my son's, in Temple street, before he left. I looked at my watch, after getting across the bridge, and into Cambridge street, and it wanted ten minutes of three. I saw Dr. Parkman, as I think it was, just about that time, on the opposite side of the street. I was on the left hand side, and he on the right hand side. I reached my son's just as he was leaving. I know that it was the Friday be-

fore Thanksgiving that I had an engagement to take tea with a lady in the city, and that it was Friday that I wished to see my son.

Cross-examined by Mr. Bemis. — Dr. Parkman was going towards the bridge, at the time. I had no particular occasion to notice him; only saw him just as he was passing abreast of me, and probably should never have thought of it again, except for the report of his disappearance. He was nearly abreast of me, on the opposite side, when I first observed him.

To the Chief Justice. — I do not mean to be positive of having seen him. I only believe so.

Samuel B. Dean, *sworn, — examined by Mr. Sohier.* I am salesman for C. F. Hovey & Co., in Winter street. I sold eleven yards of muslin de laine, on the 23d of November last, at twenty cents a yard, coming to $2.20. There was no other cash sale that day, of that kind of article. I made the memorandum of it, at the time. I cannot tell to whom it was sold, nor the time of day; though, from the position of the entry, I should infer that it was in the latter part of the day.

No cross-examination.

Mr. Sohier now stated that the defence had closed their evidence, but that they should hope for permission to examine their notes of testimony, during the adjournment; and, it being now a few minutes past seven o'clock, the Court adjourned till to-morrow morning.

TENTH DAY. — *Friday, March 29th.*

The Court came in at the usual hour, and the trial proceeded.

Mr. Sohier stated that the defence had no further testimony to offer.

The Attorney General desired to call the attention of the counsel for the defence, more distinctly than he had done in his opening, to the fact, that there appeared to be still due, on the note of $2,432, five hundred dollars, and upwards, to Mrs. Prescott and other parties besides Dr. Parkman, which had

never been paid, and which would not fall due, till January, 1851. If there were any proof that those parties had been settled with, he should desire it to be introduced, now, as he should contend, that they still had an interest in the note and mortgage, according to their tenor.

The counsel for the defence, stating that they should rest where they had already stopped, the counsel for the prosecution proceeded to introduce the following rebutting testimony.

Joseph Sanderson, *sworn, — examined by Mr. Bemis.* I am one of the police-officers of Cambridge.

Mr. Sohier. — We should like to be informed, to what point this witness is called, for the purpose of rebutting; to know if the evidence is admissible.

Mr. Bemis. — We intend to show by him, where the defendant was, on one of the nights subsequent to the 23d, when he attempts to account for himself.

Witness, resumes. — I have known Dr. Webster, for four years, I should think. I saw him late one night, between Sunday and Thanksgiving, of the week succeeding Dr. Parkman's disappearance. It was in Harvard Square, in Old Cambridge, close to the Colleges, where the omnibusses stop. I saw him get out of the "Theatre," or, late omnibus, there, one night between eleven and twelve o'clock, I should think. There were none of his family with him; and no other person, in his company; though others got out at the same time. I was standing near the omnibus when he got out, and I turned and followed him in the direction of his house. I don't recollect seeing him after he passed Graduates' Hall. Perhaps I followed him fifteen rods, keeping the sidewalk; though the place where he got out, is not more than four or five rods from Graduates' Hall.

I am a watchman, and was on duty, at the time. I met Mr. John Bryant, another watchman, directly after Dr. Webster passed, and made some remark about his passing, which led to a little conversation. [Conversation objected to, and not given.] Dr. Webster passed near enough to me to have touched me, if he had pleased.

I am certain that this was between Sunday and Thanksgiving. I first called it to mind, Saturday, the day after the Doctor's arrest. I am confident that it was after eleven o'clock, from the direction which I took after seeing him. I took a course in my rounds, which I never take till after that hour, except on some extraordinary occasion. I cannot tell, whether the evening was nearest Monday, or, Thursday.

Cross-examined, by Mr. Sohier. — I first mentioned the fact of seeing Dr. Webster, the night referred to, on Saturday, after his arrest, to Mr. Bryant. I talked over with him, the fact of our seeing him, but did not specify the night. I fix the hour from the part of my rounds that I was then in. I am out every night at eleven. I can't say that it was not Wednesday night. Quite a number of persons got out of the coach. There might have been ladies in it. Other people might have gone, in the same direction as Dr. Webster, though not with him. I have never said, that it was Wednesday night, that this occurred. I have never fixed on any night, that I am aware of. I am confident that it was after Dr. Parkman's disappearance. It was not Thanksgiving night; for that was pleasant. This evening, there was a moon; but it was a little hazy, so that a person would not cast a shadow. I don't know that it was not on Tuesday night. It was not on the Saturday previous. It must have been on Monday, Tuesday, or Wednesday night.

I followed Dr. Webster some considerable distance, in the direction of his house. He was not in my sight beyond Graduates' Hall, so that I don't know what direction he afterwards took. He walked very fast. When the omnibus stopped, I was right against the wheel-horses, looking in the direction of the passengers as they got out. I did not speak to Dr. Webster. I knew him. The moon was obscured at the time; but it was as light, or lighter, than a starlight night. I was standing still when he passed me; not talking. I then turned round and followed him, and did n't speak to any one till I met Mr. Bryant. There is not a street turning to the left, immediately at the end of Graduates' Hall, but it is nearer the church. The Theatre omnibus runs every night that the theatres are open.

Daniel Harwood, *sworn, — examined by Mr. Bemis.* I am a dentist in this city.

[The counsel for the defence again inquired as to the rebutting character of the proposed testimony. It was stated, on the other side, that the prosecution expected to prove, by this witness, and other dentists, in opposition to the testimony of Dr. Morton, that there were marks of identification about mineral teeth, which would enable the maker to recognise his own work; and also, that there was a peculiarity about Dr. Keep's work, in particular, which made it distinguishable from other dentists'. The Court deemed the evidence competent.]

Witness, resumes. — I have resided, and practised dentistry, here, since 1829, with the exception of an interval from 1841 to 1847. I am a member of the Massachusetts Medical Society, and one of its Counsellors. I have always been busily employed in my profession; and was one of the first who did anything extensively in this city, in the manufacture and setting of mineral teeth.

As a general answer, a dentist would be as able to recognize large cases of his own manufacture, as a sculptor the product of his own chisel, or a merchant his own handwriting. By "large cases," I mean, where there are several teeth, or several blocks of teeth, all connected together upon one plate. A dentist cannot recognize single teeth, except from their composition; but about teeth in combination, there are general characteristics of form and arrangement, by which he is able, in most instances, to recognize his own work. I should not like to say, that I could identify Dr. Keep's work in all cases, but I can, generally; not from the composition of the teeth, but by their combination. Dentists are in the habit of examining other work, connected with their patients' teeth, than their own, and inquiring, or expressing an opinion, as to the dentist by whom it was executed. Thus, I frequently say to patients, "This is Dr. Keep's work," or "Dr. Flagg's work," or "Dr. Tucker's work." And when teeth come into my laboratory of others' manufacture, the makers are recognized by my assistants, as well as by myself.

[The blocks of mineral teeth found in the furnace, were exhibited to the witness, and he was asked, If he could identify them, as of Doctor Keep's manufacture?]

Dr. Harwood, resumes. — These are covered with foreign substances, and probably somewhat changed from their original appearance. I think that some other dentists, in this vicinity, use the same material for the composition of their teeth, as Dr. Keep. I have the impression that Dr. Flagg and Dr. Morton, of this city, and Dr. Kelly, of Newburyport, use the same materials, and in nearly the same proportions, as Dr. Keep. We all use the same materials, in general; — quartz, and felspar, and pipe-clay; but in different proportions. The peculiarity of Dr. Keep's teeth, is, that they appear to have but very little, if any, pipe-clay, in their composition. I feel pretty confident, that these are of Dr. Keep's manufacture. The block is certainly in his style; because, he does not separate the teeth down to the gum, as I, and many others, do. I do not say that it is *his* style,

alone. I have gained a knowledge of his style, by seeing his work in the mouths of patients, and at his office.

[The Counsel for the Government now proposed to ask the witness, whether there was anything in the peculiarity of the shape of the left lower block, which would be likely to furnish any aid to a dentist, in identifying his work, again. This was objected to by the defence, on the ground, that the testimony would be only in corroboration of Drs. Keep and Noble, and that the Government should be confined to matter strictly of a rebutting nature. The Court ruled, that the witness could only state peculiarities applicable to a professional judgment of Dr. Keep's means of identification.

Witness, resumes. — If I had made such a block of teeth as *this*, [alluding to the left lower block,] and had the mould in which I made them, and had seen them a short time before, and then these teeth were brought to me in their present condition, I think that I could recognize them; and that Dr. Keep could not be mistaken, in saying that he could identify them. There is no possibility that Dr. Keep could be mistaken, unless the teeth were duplicated.

Cross-examined, by Mr. Sohier. — The block itself has a peculiarity such as I never saw; a projection below the molar teeth, amounting to an extraordinary absorption. From this, as well as the general workmanship and style of making, I should know them if they were mine, even in their present condition. The material is not peculiar; but the peculiarity consists in the composition of the block. Others besides Dr. Keep combine teeth in blocks; but there is something in the general style and combination of this block, which would enable one to identify it. I never saw an absorption like this. Since I was summoned, I have looked over some bushel or more of plaster models of jaws, and have not found one with as great an absorption, as is here indicated at one point. From all the circumstances taken together, the style of the work, the remembrance of the facts connected with the making, and the correspondence of the moulds, I think that Dr. Keep could not have been mistaken.

Joshua Tucker, *sworn*, — *examined by Mr. Bemis.* I am a dentist in this city, and have been in practice, twenty-one years; have received a medical education. I have been in constant employment during that time, giving attention to the manufacture and setting of mineral teeth, as well as to the care of the natural teeth.

[The teeth found in the furnace, were exhibited to the wit-

ness, and he was asked, If he could observe upon them any means of identification?]

Witness, resumes. — All these blocks, except one, are so disfigured, that I should not like to give an opinion, whether they could be identified by the maker: but in regard to that one, the left lower block, I should say, that, it affords as complete a means of identification, and that the maker could as certainly recognize it, as the artist who has spent a week in studying a face and painting it on canvas, can tell that the portrait is his work, wherever he may see it.

Cross-examined, by Mr. Sohier. — I give my opinion, in part, upon the supposition of his having the model with which to compare the teeth. The teeth may have warped, in the heat to which they were exposed.

Willard W. Codman, *sworn, — examined by Mr. Bemis.* I am a dentist in this city, and have been connected with the practice of dentistry, sixteen or seventeen years, having full employment. During a part of the time, I have given attention to mineral teeth, solely. I have had a medical education, and a medical degree from Harvard University.

[The blocks of teeth, exhibited to the last witness, were here exhibited to Dr. Codman, and he was asked, What means of identification, if any, they could afford to the maker?]

Witness, resumes. — I think, that they furnish sufficient means of identification to the maker.

To the Chief Justice. — I mean, that the dentist who made them, could identify them in their present condition, from the workmanship and materials.

Cross-examined, by Mr. Sohier. — I should think that there was a very strong probability, that the maker could identify them. The teeth might be warped by the heat, so that the model would not aid in identifying them.

Benjamin H. Todd, *sworn, — examined by Mr. Bemis.* I am a resident of this city; am employed at the Custom-House.

I was present at a conversation at the toll-house on Cragie's bridge, on the Sunday succeeding Dr. Parkman's disappearance. Mr. Littlefield was present, and some others. It was at the toll-house on the further side, and about dusk. Mr. Littlefield and myself were going over to East Cambridge, out of curiosity, having understood that Marshal Tukey was to have a body of men there to search for Dr. Parkman. When we arrived at the toll-house, Mr. Littlefield paid the toll. The

toll-man was there, and an old gentleman, sitting back in the house, and perhaps, another person; I did not know the old gentleman.

Mr. Littlefield asked the toll-man if the policemen had been along over; and he replied, that there had been some by, but that they had gone back, again. I then asked the toll-man, if he was the person who saw Dr. Parkman pass over, in company with an Irishman; and he replied that he was not; but that it was the young man who had gone to tea. The toll-man then went on to say, what the young man had said about it. Mr. Littlefield remarked, that he was concerned, or employed, at the College; and one of us spoke of the report, that Dr. Webster had paid Dr. Parkman money. Mr. Littlefield then said that he saw Dr. Parkman coming towards the College, Friday afternoon: and that is all that I recollect of his saying, about Dr. Parkman. I do n't know whether it was he, or, I, that mentioned the report about Dr. Webster's paying the money; nor, whether Mr. Littlefield had previously seen Dr. Webster, that afternoon, or not.

Cross-examined, by Mr. Sohier. — We were all close together, when this conversation occurred; Mr. Littlefield and I were standing, looking in, at the toll-house window. I did not hear Mr. Littlefield say, that he saw Dr. Parkman come out of the College. I mean to swear that he did not say it. I recollect every word that he said. I called it to mind, the next morning; and may have thought of it, a half a dozen times since. I have talked to Mr. Littlefield about it, since the trial began. I met him in the street, before Mr. Green testified, and he asked me if I recollected going over to Cambridge bridge, and what was said at the toll-house. I told him that I did recollect it; and had some talk with him about it. Yesterday, he told me that he thought that I should be summoned. I have not talked with Andrews about my testimony, nor with Mr. Littlefield in Gibbs's eating-house.

Isaac H. Russell, *sworn, — examined by Mr. Bemis.* I reside in this city; am a dry-goods dealer, of the firm of Jacobs & Co.

I know Mr. Samuel A. Wentworth, who keeps a provision-store in Lynde street. I have no recollection of walking with him, or being in his company, on Friday, Nov. 23d. I think that I have been in his company, once, when he pointed out Dr. Parkman to me; but I do n't recollect how shortly it was before his disappearance. It might have been one day, or

it might have been three months before then. If it had been that day, I think that I should have recollected it. I heard of Dr. Parkman's disappearance, shortly after it occurred. I can't tell the day, but I saw advertisements in the newspapers about Dr. Parkman, and did n't then recollect having seen him.

To the Chief Justice. — I have no recollection of the place where I was with Mr. Wentworth, when we saw Dr. Parkman.

Cross-examined by Mr. Sohier. — I know Mr. Wentworth and sometimes walk with him. I have no doubt that I should have remembered the fact of seeing Dr. Parkman, if it had occurred about the time of his disappearance. I do n't recollect when, where, or how, I first heard of his disappearance.

[The Attorney General now rose and stated to the Court, that there were some four or five witnesses who had been summoned on the part of the Government, whom he wished to call, to show that there was a person about the streets of Boston, at the time of Dr. Parkman's disappearance, who bore a strong resemblance to him, in form, gait, and manner; so strong, that he was approached and spoken to, for him, by persons well acquainted with Dr. Parkman. Mr. Merrick, on the part of the defence, objected to the evidence, as unusual in its character, and as amounting to nothing more, than that the witnesses were persons of such poor perception, that they could not distinguish one man from another. The Attorney General replied, enforcing his position by the argument, that the witnesses for the defence had been allowed to testify to seeing some person whom they believed to be Dr. Parkman, but to whom they had not spoken or offered to speak, while, in the present instance, the witnesses had addressed, or been upon the point of addressing, the supposed Dr. Parkman, and then discovered their mistake. He also alluded to a trial which had occurred in Middlesex county, a few years before, in the instance of a man named Sherman, where the same kind of evidence had been considered proper.

The Court, after consultation, deemed the evidence incompetent; the Chief Justice remarking, that there would perhaps be no objection to the introduction of the very person supposed to resemble Dr. Parkman, but that this testimony of the resemblance of an unknown stranger, was quite too remote and unsatisfactory.]

George W. Fifield, *sworn, — examined by Mr. Clifford.* I am keeper of the toll-house on Cragie's bridge. I recollect the time when the clock was put up on the Court-House at East Cambridge. It was put up last fall.

[The Counsel for the defence objected to the relevancy of evidence to show the accuracy of this clock for time-keeping. On the part of the Government, it was insisted that it might tend to invalidate the testimony of Mr. Thompson, as to the time when he supposed that he saw Dr. Parkman. The Court thought it competent to show that the clock was an irregular time-keeper.]

Witness, resumes. — So far as I know, it has not kept accurate time. It has often stopped, and does not agree with other clocks. From my place at the toll-house, I can see the Lowell Railroad clock, and it has not agreed with that. It has been a very inaccurate time-piece, according to my observation.

Cross-examined, by Mr. Sohier. — I should think that the clock referred to, the Court-House clock, had been put up about six months. I noticed it both before and after Dr. Parkman's disappearance. It would sometimes be faster, and sometimes slower, than the railroad clock; from a quarter, to a half an hour.

Samuel D. Fuller, *sworn, — examined by Mr. Clifford.* I am toll-keeper on the Cambridge end of the West Boston bridge; have observed the Court-House clock at East Cambridge. It was put up early last fall. It has not been an accurate time-keeper, at all times. It has stopped, sometimes, altogether; at other times, it has varied five or ten minutes from other clocks.

Cross-examined by Mr. Sohier. — I have known it stop in snow-storms. It was more irregular when first put up: it has since kept better time.

The Government here rested their case; and at half-past eleven o'clock, Mr. Merrick commenced his closing argument for the defence, as follows: —

May it please Your Honors,
and, Gentlemen of the Jury:—

I need not say to you, with what feelings of embarrassment I rise to address you, at the close of this protracted investigation. I cannot be more sensible than you are, of the magnitude and vast importance of the issue to be determined, or of the difficulties to be encountered in the examination and discussion of the accumulated mass of evidence upon which its decision depends; or of the solicitude, everywhere felt, that all the testimony, submitted to you, should be rightly under-

stood, and that a rigid and exact deduction of every just and legitimate consequence, which results from it, should lead to a clear and satisfactory conclusion. The deep interest, with which the progress of this solemn investigation is watched, and the intense anxiety with which its result is waited for, are not limited to the contracted circle of the friends of the party who is the immediate object of the prosecution, but they pervade all classes of society, and all parts of the country; and make it far transcend, in the universal estimate of its importance, any criminal accusation which has ever occupied the attention of our judicial tribunals.

A few months since, a well-known and highly respectable individual suddenly disappeared from this city. A citizen, allied to a numerous and influential family, himself affluent, and connected with many great pecuniary operations in the place where he had dwelt from his birth, — who had been accustomed, day by day, and month by month, and year after year, to mingle freely with his fellow-citizens in this community, — was suddenly lost; and no known cause could be assigned, to account for his strange and alarming disappearance.

That disappearance was followed by inquiries, broad, extensive, almost universal. His friends naturally, inevitably, took the deepest interest in the discovery of his person, if he were alive, or in the recovery of his body, if he were no longer living. They enlisted at once, in their behalf, the entire police force, and all the official authority of the city; much more than that, — they enlisted the united sympathies and the united energies of the whole people in one common service of search and inquiry. A full week passed by, without bringing one word of reliable tidings of their departed friend to his anxious and suffering family, or to an eager and excited community. And when, at length, all inquiry, and all effort, and all investigation, seemed to be utterly baffled, and there was no hope left, — when all that pertained to him from the first moment of his disappearance, seemed to be involved in impenetrable darkness, a sudden and astounding report of the discovery of his lifeless body, fell upon us all, filling our hearts with the most fearful apprehensions. His mangled remains, it was believed, were brought to light. The perpetrator of the awful crime, by which life had been taken, and that body reduced to the condition in which it was found, was said also to have been detected; and the individual, to whom was imputed this enormous offence, was one, who, in the ordinary exercise of human judgment, would

have been no more likely to have been suspected of such atrocious criminality, than any one of you, or of us, who are engaged in the painful duties of the present trial.

These astounding discoveries were instantaneously followed by a disclosure to the community, in every form in which they could be made, of the various circumstances which were supposed to have a tendency to prove that the mutilated portions of the human body, which were found in the Medical College, were the remains of Dr. George Parkman, and that the prisoner at the bar was present at the scene, and connected with the agencies which were the cause, of his death. Incident after incident was communicated to the public, and everything which could bear against this unhappy prisoner, was spread abroad, as it were, on the wings of the wind. Every sheet that issued from the daily press, — every hour that passed, were fraught with new revelations, which were lavishly diffused through all the avenues of society, as evidence at once of the death of Dr. Parkman, and of the guilt of the prisoner.

In the mean time he was in the cells of your prison, a solitary and silent sufferer. While every incident tending most injuriously to affect him, was the subject of daily communication and discussion abroad, he was alone, without friends, and without help; — for, what could the feeble efforts of his wife and daughters, from whom he had been separated, avail him, in repelling the accumulating circumstances adduced to sustain the charges against him? But he willingly waited in silence; for he waited in hope and confidence also. He sent forth no appeal to the world without. He suffered all the communications, of which I have spoken, to be spread broadcast through every channel, until the voice of their echo came back from the most distant parts of our country, and from other lands, without once asking the public even to suspend the formation of their judgment. He waited in silence, and in hope, because he felt that it was safe to repose his trust in those among whom he had spent his life, and who he knew were finally to be his judges. He foresaw that the time would come, when passion would subside, when prejudice would give way, when calm reason would intervene, and his country would try him fairly, in the usual and ordinary administration of the law in her judicial tribunals.

That hope and expectation are not disappointed. He fearlessly confides his all to your wisdom and integrity. He has solicited no indulgence as to the time of his trial, nor sought any forbearance whatever from the public prosecutor. He

never asked one hour's delay of this investigation; but, so soon as it was the pleasure and convenience of the Government, consistently with the arrangements of this Court, to enter upon it, he promptly held himself prepared for his defence: — not prepared by any series of inquiries which he could institute, or by any ingenious plan of escape which he could devise, in his lone and solitary confinement, — but prepared by a sustaining consciousness within him, which would enable him to come with confidence, whatever might be the apparent force of outward circumstances, and trust at once his cause and his life to an impartial jury, under the instructions of a learned and faithful Court, against all the proofs which the Government could accumulate in support of their accusation.

It impossible that you, Gentlemen of the Jury, did not know much of this cause, before you took the seats you now occupy. It is impossible that you should have been ignorant of many of the great and leading facts, which are relied upon now as among the most cogent proofs. In one form or another, you must have heard most of what has been here detailed to you in the evidence of the Government; nor, in a community where these various subjects have been topics of continual and almost hourly discussion for months, can you have failed often to have known them to be subjects of comment and remark; — of remarks, in which it is not improbable that you may, yourselves, have in some degree participated. And yet one and all of you, rendering your answers under the solemn responsibility of your oaths, have declared that all those circumstances with which you were acquainted, and all the comments which you had heard concerning them, had created no prejudice in your minds against the prisoner, and had induced no bias upon the question of his guilt or innocence. I willingly and gratefully receive that statement, because if these circumstances were without the power to produce any such effect then, — if they were then too feeble and inefficient to affect the mind by a prevailing suspicion, or an inclining bias, — I am not without the means of estimating how ineffectual they should, and will be, now that they are here reproduced in a judicial proceeding, as legal evidence.

But what is the charge which the Government have made against the prisoner at the bar? What the issue to be tried? And what the proofs upon which it is to be determined?

The charge is murder; the murder of Dr. George Parkman, on the 23d of November, 1849. The homicide is alleged in

the indictment, to have been committed in different ways, and by different means; the various statements being such, as the Attorney General, after the examination before the Grand Jury, thought were suitable and appropriate, or necessary, to enable him to maintain it.

You already understand, from the full explanations which have been made to you, that it is allowable and lawful, in an indictment against an accused party, to set forth the offence in various forms, and to allege in different counts, distinct and independent acts, as the means by which it was committed. This indulgence is allowed, because it is an indispensable rule, that to justify a conviction, the Government must prove the essential facts, exactly as in the legal process of accusation they are alleged to have occurred. The interposition of a defence, may show that the manner in which the crime was committed, was different from what it appeared, upon the proof before the Grand Jury, to have been; and therefore the law wisely and justly allows a wide latitude of averment and declaration in the indictment. But the rule and the indulgence must both stand together; and therefore, after the exercise of all the right which the Government possesses to exhibit the accusation in various forms, it must abide by the terms in which its officers have chosen to state it. The evidence must conform to the averments, and establish them as facts, or the prosecution cannot be maintained.

Of this right, the Government have taken full advantage, in preparing the indictment against the prisoner; and it is upon that only, just as its officers have chosen to make it, upon which he is to be tried. I do not intend, at present, to speak of the peculiarities of the several averments; but I shall have occasion to do so hereafter. It is sufficient now, to consider the indictment as charging upon the prisoner, in general terms, the crime of murder.

To establish this general charge, there are certain facts, all of them essential elements of the offence, which it is indispensably necessary that the Government should prove beyond reasonable doubt. It must prove the death of George Parkman, and that his death was caused by the agency of another person; that the prisoner at the bar was that agent; and that he committed the homicide with malice aforethought. If proof of any one of these facts be wanting, a general verdict of conviction cannot be asked for. Though all the other facts should be established, if the allegation of purpose, with malice aforethought, be not also satisfactorily proved, the verdict must be for manslaughter, and not for murder.

The Government have undertaken to establish these several propositions. In the endeavor to convince you of their truth, time to an unusual, but not to an unnecessary length, has been consumed. It was unavoidable, because those propositions can be shown only, if they can be shown at all, by deductions from a vast number of collateral and surrounding facts. And it is to show the existence of these collateral facts, that all the evidence for the Government has been produced. In reference to the question immediately in issue, you perceive that the evidence is altogether indirect, circumstantial, and presumptive. In no instance whatever, has any attempt been made to establish any one of the essential elements of the crime of murder by direct proof. No person professes to have knowledge, or ventures to testify directly of any one of the great leading facts of the case: — of the homicide, the agency of the prisoner, or of the motive by which he may be supposed to have been actuated. All these are to be ascertained, if they can be ascertained at all, by inference and deduction from collateral and surrounding circumstances, more or less remote. By no direct evidence, is it attempted to be shown, that Dr. George Parkman is no longer in the land of the living; or, if dead, that he was slain by the hand of an assassin or an adversary. By no such proof is there the slightest effort to connect the prisoner at the bar with the cause or the scene of death. But you are asked to deduce and infer these great and essential, but unknown and otherwise unproved facts, from collateral circumstances, of the existence of which circumstances, the Government attempt to supply you with satisfactory evidence.

In the absence of all such direct evidence, bearing upon the great facts which the Government are bound to establish, let us consider the substitute which is relied upon. Let us consider what is the position which the parties to this great issue respectively occupy. Let us ascertain precisely what proposition the Government propose to maintain, and what are the concessions and claims of the prisoner, and we may then understand the precise matters which are to be investigated, and the exact question which you, upon your high responsibility, are to determine.

The precise proposition which the Government have announced and undertaken to establish, and upon which rests the whole superstructure of accusation against the prisoner at the bar, is embraced in the following statement, viz.: That Dr. George Parkman, between the hours of one and two of the clock in the afternoon of Friday, the 23d of November, A. D.

1849, entered the chemical lecture-rooms in the Medical College in North Grove street, in this city, and then and there had an interview with the prisoner at the bar: that he never withdrew from those rooms, or left that building alive; that the parties never separated; but, that Dr. Parkman was there immediately slain, and the remains of his body were disposed of and kept concealed, by the prisoner, in the building, until their discovery during the ensuing week.

Of this proposition, the great peculiarity and leading fact to which I now wish to call your special attention, as being of vital importance, — of controlling influence on the question you are to determine, — is the assertion, that the parties never separated after they met in the Medical College; and that Dr. Parkman was never, subsequent to that interview, abroad in any part of the city of Boston. If in this the Government are mistaken; if, on the contrary, the parties did separate, and Dr. Parkman did then go forth from the Medical College and appear in any of the streets of this city, the charge against the prisoner must, upon all the proofs adduced against him, inevitably fail; for there is no pretence of the existence of a particle of evidence, that, after the interview in the Medical College at the hour before-mentioned, they ever came together again, either there, or elsewhere. Unless it was then, at that admitted interview, that George Parkman was the victim of violence, though he may have been slain by the hand of a murderer, there is nothing to connect his death with the prisoner at the bar, or with any agency of his. Such is the proposition of the Government, and such the inevitable consequences which arise, either from the insufficiency of proof to establish it, or from positive proof of the actual separation of the parties after the object of the interview between them had been accomplished.

What is the position assumed by the prisoner, and what the account which he gives of the transactions which at that time occurred between Dr. Parkman and himself? He concedes now, — what indeed he has always asserted, — that, at the hour of half-after one o'clock, on the 23d of November, Dr. Parkman went, by special appointment, to the Medical College, to meet him, in relation to an agreed matter of business between them; that an interview upon the subject of their mutual affairs then took place; that the specific purpose of their meeting was accomplished; and that then Dr. Parkman, in life and activity, retired from the room where they had met, and departed from the building. The precise time is material. It was the hour of half-after one o'clock; neither

later nor earlier. That is all which the prisoner concedes. Beyond that, he denies everything. And if the Government will not take this admission, but claims or insists that Dr. Parkman went into those rooms at a later hour than that, they must prove it, or submit to the consequences which result from regarding the admission of the defendant as to the hour of the interview as an established fact.

The importance of the exact hour of the interview between the parties, I shall hereafter more fully consider and develop. My purpose is now to fix your attention upon the decisive question, whether they separated when that interview was over; and whether Dr. Parkman was subsequently seen abroad in any of the streets of this city. These opposite propositions — the assertion and denial of their separation — make the great issue between the Government and the prisoner; and, rightly to determine it, you are to examine and consider and give effect to all the evidence in the case.

The same general characteristics, which mark with prevailing and unvaried peculiarity all the proofs of the Government in relation to the essential facts it is bound to establish, are particularly observable in the means to which resort is had to support the denial of the separation of the parties on this eventful day. They do not attempt to show it, by any direct or absolute evidence, — by the testimony of any outward observer, who witnessed anything that transpired within the walls of the College; but they rely alone upon the fact of his continued absence, and the unsuccessful search for his discovery, which was commenced on the following day, and continued with unabated diligence during the whole of the ensuing week. Against the conclusions which are drawn from these indirect and inconclusive circumstances, we present to you the positive testimony of many witnesses who saw Dr. Parkman abroad in the streets of the city, at times of the day wholly incompatible with the hypothesis assumed by the Government.

Upon our proposition, if we can maintain it, we stand securely against the whole body of evidence which the Government have put into the case. It repels the possibility of the conclusion from any and from all the facts, in support of which any proof has been adduced, that Dr. Parkman lost his life by the hand of Dr. Webster. If he once left the College alive after their interview, he is living still, or he has died a natural death, or fallen by other hands than those of the prisoner at the bar; for there is nowhere to be found the slightest proof to warrant even a suggestion that they met again,

if they parted from each other upon the conclusion of the business which brought Dr. Parkman to the Medical College.

I do not by any means intend to assert, or to imply by these observations, that the vast mass of circumstantial evidence, now produced by the Government, has no tendency to support the accusation made against the prisoner. I am quite ready to admit that such is its tendency. Otherwise it would be wholly irrelevant and inadmissible; the grand inquest could have made no presentment, — no indictment would have been found, and no trial could have been had. The question is not, whether the evidence has a tendency, but whether it is sufficient, to establish the fact beyond all reasonable doubt. It must produce irresistible conviction upon your minds, or the prisoner is entitled to an acquittal.

But the proposition which I distinctly assert is, that the separation of the parties at the close of their interview is incompatible with the conclusion, attempted to be deduced from the circumstances which have been proved, that Dr. Webster is guilty of causing or occasioning the death of Dr. Parkman. No matter that this great fact of their separation will not enable you to account for all subsequent appearances. The means of explanation may not be possessed, however certain you may be that Dr. Webster did not commit, and could not have committed the homicide. Suppose you are satisfied of the fact of their separation, — that Dr. Parkman withdrew from the College, and was seen walking, during several successive hours in the afternoon of the day, in different streets of the city; — then say, if you please, that you are also satisfied that the mutilated parts of the human body found in the vault, the tea-chest, and the furnace, were the remains of the body of Dr. Parkman: — Suppose, still further, that the proofs should be deemed conclusive that he came to his death by the hand of violence; — and then add to all these various assumptions, the consideration that you cannot explain how the body came to be found where it was discovered, without assuming also that Dr. Webster was guilty of the homicide; — is his guilt a necessary conclusion from these premises? By no means. All this may be true, and yet all may be consistent with his innocence. You may be sure that he could not have been guilty of the criminal act of the destruction of the life of Dr. Parkman, because you know that they parted in life, and you know also that there is no evidence that they ever met in life again. There is a mystery, beyond which you cannot solve. It is not needful that you should do so. Nor is there any ground of claim upon the prisoner, that he

should attempt to account for what is as inexplicable to him as it is to you. He has gone far enough, when he has exhibited to you proof which wholly disconnects him from any possible scene of violence, and which is utterly incompatible with the supposition of his guilt. You will not hold him to supply you with impossible explanations. When you find that the separation of the parties makes it impossible that he could have perpetrated the atrocious crime which is imputed to him, you will not hold him responsible for those surrounding facts, for the existence of which, neither he nor you can furnish any satisfactory solution. It is enough that no effort, however earnest or zealous or persevering, can find out their cause; they may be allowed to belong to that great class of the inscrutable facts of human life, which baffle the power of human reason, and defy the most intense efforts of human investigation.

Nor is there anything extraordinary in this; it is but the renewed manifestation of a truth verified by all individual experience. It has been wisely said, that truth is stranger than fiction. The imagination cannot keep pace with the actual events of life. There are mysteries in the order of Providence, in the circumstances of our condition, and in the ordinary course of our lives, which no intelligence we possess can adequately explain. They lie deeper down in the depths of our being than human reason can fathom, — where its profoundest exertions can never sound.

Then let me call your attention to the proofs, that these parties did in fact separate from each other, after their interview, on the 23d of November. And if it can be made clearly to appear, that, while the prisoner at the bar remained within, Dr. Parkman went out from the Medical College, — then, though his remains were subsequently found mutilated and dishonored beneath its foundations, his death can be attributed to no act or violence of Dr. Webster; and, however much there may be in the evidence to excite suspicion, there is nothing in it which can justify his conviction.

We have produced several witnesses, all resident in this vicinity, to testify to you on this subject. The defendant has enjoyed no favorable opportunity to increase the amount of such evidence, if it exists. Himself confined in prison, he could hope for no aid from his family — from his wife and daughters — in inquiries which might result in the discovery of other persons who did see Dr. Parkman during the afternoon of the day he visited the Medical College. Yet, though the number of witnesses whom we have been able to produce

is not large, even in this respect, our proof does not stand in a disadvantageous contrast with that of the Government, which traces the course of Dr. Parkman during the morning; — for, with all the search that has been made, by the aid of his family, the police, and the whole official force of the city, the number of their witnesses upon this point is but little above our own; while there can be said to be no advantage on their side, either in distinctness of recollection, or the means of identification.

We have submitted to you the testimony of Mr. Thompson, Mr. Wentworth, Mr. Cleland, Mrs. and Miss Rhoades, and Mrs. Greenough. We have also called Mrs. Hatch. I shall not now dwell upon her testimony. Hereafter, I shall have occasion to revert to it, and shall then endeavor to show you that it is of most material value and importance; and, connected as the fact she states is with circumstances testified of by others, it will deserve your careful consideration.

Mr. Thompson says, that he came into Boston, from Cambridge, on the afternoon of Friday, the 23d of November; and that, at twenty minutes after two o'clock, he met Dr. Parkman in Causeway street. He is enabled to fix the day by the circumstance, that he came into Boston to deliver to the person for whom the service was rendered, a memorandum of an examination he had made in the Registry of Deeds for the county of Middlesex into the title to a certain parcel of real estate. He did deliver it, and at the same time gave a receipt for his services, which bears date the 23d day of November; and that day was the only time, for a week before or a week after, when Mr. Thompson was in the city. He left Cambridge at near two o'clock, observing the hour of his leaving, as it was indicated by two public clocks in that place; and soon after he met Dr. Parkman, he had occasion also to refer for the time, to his own watch. Thus he most definitely fixed the day, and the hour of the day, of their meeting in Causeway street; and this time was so long after Dr. Parkman undoubtedly entered the Medical College, that it is certain that he must have left it, if he was actually seen by Mr. Thompson.

Why should not Mr. Thompson be believed by you? He was well acquainted with Dr. Parkman. He had known him by sight for ten years; and, during the last five years, had frequently transacted business with him in the office of the Register of Deeds for the county of Middlesex. He had ample opportunity to take notice; and he says that his observa-

tion was clear and distinct, and that his recollection of the circumstance is full and complete. No attempt is made by the Government to impeach the character of Mr. Thompson. I supposed, indeed, from the cross-examination, conducted by the Attorney General, with a written memorandum held in his hand, said to be signed by the witness, that there might be an attempt to show that he had made, on other occasions, statements differing from those to which he testified here. But his explanations appear to have been perfectly satisfactory, both as to the origin and contents of the paper; for the Attorney General has not seen fit to exhibit it to you for your inspection.

Nor is there any reason disclosed, in another part of his cross-examination, which should affect his credibility. He entertains, it seems, some peculiar opinions. He believes in biology, and supposes himself capable of being put into what is called the biological state. In all this he may be right, or he may be wrong; it is mere matter of theory and opinion. We know that doctrines in religion, and theories in philosophy, which seem to us to be strange, fantastical, and absurd, are often adopted by men who are sincere and ardent seekers and lovers of the truth. It is perhaps most rare that such novelties are adopted by men who are not honest in their belief. They who go against the current of opinion, and the fashion of the times, do so, not to secure public favor, but because the sincerity of their opinions constrains them to forego or disregard it. And yet, no better reason than this can be assigned, why full credit should not be awarded to Mr. Thompson; a reason, I am sure, which you cannot deem sufficient to justify the neglect or the discarding of his testimony. If it be relied upon, it establishes the vital part of our defence.

Mr. Wentworth, a gentleman well known in this city, and whose personal appearance upon the stand certainly entitles him to your most favorable consideration, testifies that, in the afternoon of this same Friday, between the hours of half-after two and half-after three, he met Dr. Parkman in Court, at the head of Sudbury street; that they were coming towards each other, from opposite directions; that, just before they met, the witness crossed to the opposite side of the street, and at that moment took notice of Dr. Parkman, and of his peculiar manner, as if he were looking over the tops of the buildings; all which he particularly described to you. He was himself walking with Mr. Russell, whose attention he drew, by some observation, to the appearance of Dr. Park-

man. He states the circumstances by which he recollects with accuracy the time of this occurrence, — the most material of which is what occurred between himself and his wife, when he returned to his home in the evening of the following day. She told him that two men had been there inquiring for Dr. George Parkman, who was missing from the city; to which he replied, that he thought he could not be far away, as he saw him in Court street the afternoon preceding. Mr. Wentworth, moreover, states other facts, which you will remember, of his going to Haymarket Square and to Quincy Market, on particular business; which cannot but convince you that he is not mistaken in his recollection or in his statements of the day, or of the hour of the day, when he met Dr. Parkman.

It is true, that Mr. Russell, who is called and examined by the Government, does not recollect the time as it is remembered by Mr. Wentworth. Indeed, he seems to have no recollection whatever upon this subject, other than that such a meeting did, at some time, take place. He thinks, to be sure, that, if it was upon the occasion stated by Mr. Wentworth, the disappearance of Dr. Parkman, so shortly afterwards, and the great inquiry which was instituted respecting him, would have brought this occurrence distinctly to his recollection. But when he states, as he does, that he cannot tell whether it was one day or three months before that time, it is plain that all knowledge of time has faded from his recollection; and that no other trace remains but of the fact, that Dr. Parkman was met and observed by them, just as is stated by Wentworth.

There is nothing remarkable in this. The same event makes, upon different individuals who observe it, different degrees of impression. We are all engaged in many occupations, and are conversant with many individuals. Crowds pass us in the street. We recognize our friends or our acquaintances, as we meet; but, unless there be something to fix our attention, these casual notices pass away from our recollection, and are so completely forgotten as to be to us no more than if they had never existed. I might appeal to your own experience. I might ask you if you could now, separated as you have been, for many days, from your families, your business, and your acquaintance, recall to your memories anything like the probable number of persons whom you met or conversed with on the day next before you came to take your places in this important trial. But surely it cannot be necessary to argue, that the forgetfulness

of Mr. Russell is no impeachment of the recollection or of the veracity of Mr. Wentworth; or that, because the one has forgotten what to him was a casual and unimportant event, it should not be treasured up in the memory of the other. Mr. Wentworth is an unimpeached and unimpeachable witness, and his uncontradicted testimony should be held sufficient to establish a fact, the existence of which he states with undoubting confidence.

I come next to the testimony of Mr. Cleland, of Chelsea, a gentleman of intelligence, and of most respectable position in society. On the morning of Friday, the 23d of November, as a member and one of the officers of a religious society in that town, he came to this city, to make arrangements to secure the services of a clergyman at his church on the ensuing Sabbath. Not having succeeded in his object during the morning, he went in the afternoon to call upon the Rev. Mr. Wildes, in Franklin street. He returned through Washington street; and he testifies that on his return, between the head of Franklin and Milk streets, he met Dr. Parkman, at a time which could vary but little, if at all, from twenty minutes after three o'clock. He saw him under circumstances which particularly attracted his attention. He appeared to be walking with a laboring man, in his common working-dress; and Mr. Cleland says, that the contrast immediately occurred to his mind, — Here is Dr. Parkman, a man of wealth and affluence and high personal position in society, walking in the street with a laboring man, in his working garb. He thought it was peculiar, and therefore kept watch of him; and he did not take his eyes from him from the time when he first noticed him, at a distance of four or five rods, until they passed each other. He noticed, in the meantime, that Dr. Parkman was not walking with the laboring man, as he at first supposed; but that they separated soon after he began to take notice of them.

Of the accuracy of Mr. Cleland in all these statements, there seems to be no possible room to entertain a doubt. He had known Dr. Parkman for many years; and his observation of him upon this occasion was distinct and particular. Of the time and the place, there can be no question. The day is fixed by the occasion which required the visit of Mr. Cleland to Franklin street; it is made certain by the note which he that morning wrote to one friend, and by the note which he received from another, both of which bear this date, and both of which had relation to the business which made it necessary for him to see Mr. Wildes that day, and both of which are

produced by the witness to fortify his recollection on the one side, or to test it on the other, if the Government chooses to submit them to you for your inspection. The time, the place, the hour, and the person, are made as certain as such events can be, by the testimony of an upright, intelligent, and disinterested witness. Who will presume, in the absence of all contradiction or of rebutting proof, to affirm, at the hazard of life, that he has fallen into error or mistake? Can you conscientiously reject this testimony, which you cannot certainly know is not true, upon the mere surmise and conjecture, that he may have fallen into error upon a question of personal identity?

There is, still further, the testimony of Mrs. Rhoades and her daughter. They both testify, that they met Dr. Parkman in Green street, about five o'clock in the afternoon. They make the day certain when this occurred, by the occasion of their absence from home. They had been at Hovey's, and purchased a dress for the daughter; the sale-books at Hovey's confirm them as to the time of the purchase; and as this was the only occasion when the mother and daughter passed home through Green street together, the only question which can possibly be made is as to the identity of the person whom they met. They had both known Dr. Parkman perfectly well. Mrs. Rhoades had been upon terms of some intimacy with his family for years, and they were accustomed to salute each other as they passed in the street. They did so upon this occasion. And these respectable ladies entertain now no doubt of the fact, that they then saw and passed Dr. Parkman. Mrs. Rhoades has been especially anxious and cautious and vigilant upon this subject. She has not been insensible, that her friends of the Parkman family have supposed that she had fallen into some mistake, and she has tested the accuracy of her memory by the utmost power of reflection. The result is a clear confirmation of her conviction, that she cannot be mistaken. And thus you have the most conscientious testimony of a woman of more than common intelligence, of unblemished reputation, and unsuspected character, — sustained, if not corroborated also, by the recollections of her daughter, — that Dr. Parkman was in Green street many hours after that at which he had entered the Medical College. Do you know that it was not so?

Another most respectable witness, Mrs. Greenough, of Cambridge, testifies that, on the same day, at ten minutes before three o'clock in the afternoon, she met, as she believes, Dr. Parkman in Cambridge street. The time is fixed by the

circumstances mentioned by her, concerning which it does not appear that there can be any mistake. She does not indeed state, in terms as positive as the other witnesses, that the person she met was Dr. Parkman; but she had no doubt of it then. She was confident of it the next day, when she mentioned the fact incidentally to her husband; and it is obvious, that she has, in her own mind, no doubt of it now. Admitting simply the possibility of error, her testimony is none the less entitled to the greatest weight and consideration, as tending to confirm and establish the fact, of which it is plain that the belief is clear and distinct in her own mind.

These, then, Gentlemen of the Jury, are the witnesses upon whom, and this the particular testimony, upon which we rely, to establish the vital fact, that the parties did separate from each other after their interview in the Medical College; and that Dr. Parkman departed from it, and was afterwards abroad in various parts of the city. He did not, indeed, return to his family; and he has never returned there since. His absence, and his continued absence, may be admitted to be strange, extraordinary, and unaccountable. Certainly, the occurrences of that day, respecting Dr. Parkman, are beyond all intelligible explanation. All that we undertake — all that it is at all necessary for us to undertake — is to show, that, after entering, he left the College, on the 23d of November.

It may be, indeed, that the conjecture of his friends may suggest a solution which will make the strange matter of his absence from his home quite compatible with the proofs upon which I have just been remarking. When, after their comparatively slight and fruitless search, on Friday and Saturday, they gave notice to the public of his disappearance, they very plainly suggested the cause by which it might have been occasioned. And it cannot now be either unjust or uncharitable or inconsiderate to refer to the cause, which they, after the greatest deliberation, did not hesitate then to announce to the public as a strong probability. In their advertisement, offering the liberal reward of three thousand dollars for the discovery of his person, they suggested that he might have strayed away under the influence of a sudden aberration of mind. If this calamity suddenly befell him, the singular conduct he evinced in wandering through different parts of the city, to the neglect of his home and his family, would not be without some reasonable explanation. If no one can positively affirm that it was, who has sufficient proof to authorize him to assert that it was

not so? His friends believed the suggestion reasonable, or they would not have made it in connection with their liberal offer of the reward of three thousand dollars for his discovery. But whether the calamity actually intervened, we cannot tell. The most that either we or they can assert with entire safety is, that a painful uncertainty rests alike over the events of the 23d of November, and the causes that produced them.

But one thing we know, and know with absolute certainty. We know that responsible, unimpeachable men and women have testified, that they did see Dr. Parkman abroad in this city long after the hour when he entered the Medical College. Who can say, that their testimony is not true? They may indeed be mistaken; but is it certain that they are? The mere suggestion of error in time, or mistake in person, will not do; their testimony must be overborne by abundant proof, or it is of controlling efficacy in this defence. And where is the proof, that renders it so reasonably certain that all — every one — of these most respectable witnesses are mistaken; that, in defiance and disregard of their testimony, you will dare to pronounce a verdict, which must touch the heart's blood of that man who is now upon his trial before you?

Contrast this direct and decisive evidence with that which the Government have produced here for a similar purpose, — the purpose of personal identity. When the mangled remains of the human being, whoever he was, which were found in the Medical College, were as decently arranged as they could be, they were exposed to the observation of gentlemen of the Medical Faculty, and of the friends and acquaintance of Dr. Parkman. And now they have been brought here to answer the repeated inquiries of the Attorney General, whether they could discover any dissimilarity which would distinguish them from his person, in order that you may draw from their negative answers a conclusion of personal identity. Yet, at the same moment that he is asking you to believe that these remains are but the mutilated parts of the body of Dr. Parkman, because they who saw them saw no distinguishing marks of dissimilarity, he is asking you also to believe, that responsible and intelligent men and women were mistaken, not in the naked leg, but respecting the open face, the erect form, the attitude, the movements, and the peculiarities of the living man. No: the testimony of these witnesses cannot so be disposed of. It is your solemn duty, not only to receive and consider it, but to give to it all its just weight and efficiency. No matter how much it conflicts with the theory and hypothesis of the Government. All the facts upon which

they rely as the basis of their hypothesis, — as the sources from which to draw inferences to sustain it, — may be true, and yet the prisoner at the bar may have had no hand in the perpetration of the most atrocious crime of murder. If the parties parted at the Medical College, as the testimony of these witnesses most conclusively proves that they did, wherever Dr. Parkman fell, or however he died, the hand of Professor Webster is guiltless of his blood. This is an inevitable result, if you believe in all, or even in one of these most respectable witnesses; and it is not until the rejection of the testimony of them all has been determined on, that the life of the prisoner at the bar can be brought into jeopardy. I commend it to your sober consideration; and I claim in his behalf its efficacious protection in his hour of peril. Its rejection by you, let me say, imposes as solemn a responsibility as ever rested upon the consciences of human beings.

Leaving now the further consideration of the testimony upon which I have addressed you, with the single additional remark, that it is never to be disregarded by you, but always to be present to your minds, to affect or modify or control all the evidence in all parts of the case, I shall proceed to the examination of the testimony which the Government have adduced in support of the prosecution. And, in doing so, I mean both to state the evidence, and to deal with it with all the accuracy and fairness of which my mind is capable. And though I shall find it to be my duty to deny that some facts are proved, which are supposed to be established, and to resist many of the conclusions which the Government propose to deduce from the circumstances which they have put in evidence, yet I am far from entering into strife or contest with those from whom I must necessarily differ. I have no contest in which to struggle, — no warfare to wage with my friend, the Attorney General. We do not come here to contend merely for success, — for the valueless prizes of victory; but, upon this solemn issue, to search for the truth, to vindicate the justice, and administer the law of our country. And when I address myself to you, Gentlemen of the Jury, I am sure I have no resistance to encounter, no impediment to overcome, no opposition to contend with. No; I feel rather, that it is the communion of friends; — of the friends also of the prisoner at the bar; as all of us, he with you and me, are but brethren of one united and harmonious community.

Let us consider, then, the essential facts, which the Government must establish to maintain the charge which is preferred in the indictment, and inquire how far they are

sustained by the evidence which is before you. The burden of proof is exclusively and continually upon them; and if any one of the facts which constitute an element of the crime with which the prisoner is charged, is not proved beyond all reasonable doubt, they can neither claim nor ask for a verdict of conviction.

You will not fail also to remember, that it is a principle of law, rather to be called just than humane, that a prisoner accused of crime is to be presumed to be innocent, until his guilt is established by proofs which will permit no reasonable doubt to linger in the mind.

And, in approaching the consideration of the proofs upon which the Government rely to support the charge which is technically described against the prisoner in the indictment, I cannot too forcibly or too earnestly commend to your constant regard and observance these two great and universal principles of law, — the presumption of his innocence, and his absolute right to the benefit of every reasonable doubt. If you do not accord to him, in their true spirit and significance, the full benefit and advantage of these principles, he will not be tried by the laws of the land, and his conviction would be an act of unspeakable injustice.

The Government must first prove the *corpus delicti*, as it is called in the books, — that is, in reference to the present accusation, — that Dr. George Parkman is dead, and that his death was caused by the unlawful agency of some other person.

Are you satisfied, upon the proofs which are before you, that he is dead? This question you must be able to answer, and answer affirmatively, before there can be any occasion to enter upon a consideration of any other question. If that fact be left in doubt, there can be no occasion for further inquiry. This I shall leave unreservedly to you. And I do not intend, upon this point, to do more than briefly to advert to the evidence by which it is supposed by the Government to be supported, and then to commit the decision of the question to your own inquiries and reflections, and your deliberate judgment.

Dr. Parkman entered the Medical College on Friday, the 23d of November last, and there had an interview with Professor Webster; and it may be conceded, that he has not been seen since that day, by any witness who can be produced by either of the parties to this record. One week from that time, on the 30th of November, a part of the remains of a human body were discovered in the vault of the privy under that building; and on the following day, still other

parts were found in a tea-chest, and in the assay-furnace, in the chemical laboratory. This mangled body, and these mutilated limbs and calcined bones, it is claimed, were of the person of Dr. Parkman; and the evidence submitted to you has been produced to establish their identity; the identity of that which has been found with him who was lost; — of the dead remains with the living individual.

These various parts of this discovered body were sedulously collected together; and they have been subjected to the careful inspection and examination of respectable, intelligent, and scientific gentlemen of the medical profession; and the result of all their observations is before you, in the minute statements made by them, as witnesses upon the stand. Dr. Jeffries Wyman, who may be admitted to have evinced very extensive attainments and thorough knowledge in his profession, has described to you the fragments of bones which were found in the furnace. And his testimony proves, if it is to be relied upon, that they consisted of parts of the head, neck, arms, hands, feet, and one leg below the knee, of a human being; that there was, among these fragments, nothing duplicated; nothing which must necessarily have constituted parts of two bodies; nothing which could have belonged to the parts of any body corresponding with those parts which were found in the vault and the tea-chest; and that these fragments were portions of all those parts which were wanting to complete, with the remains found in the vault and the tea-chest, the entire structure of a human body.

Discovered, as all these portions of a human body were, in the same apartments of the building, which were neither prepared nor used for the deposit of dead bodies for any purpose whatever, and no account of any sort being given how or why they came there, I admit it would be difficult to assign any satisfactory reason why they should not all be regarded as parts of one and the same body. Still, it is a question upon which your judgment must be passed.

The same medical gentlemen have all concurred, substantially, in their testimony respecting the appearance of these remains, and their general conformity to the person of Dr. Parkman. They testify that his form and structure were somewhat peculiar, and that similar peculiarities were observable in these remains; and that, in all the particulars of form, structure, size, height, color of the hair, unusual growth of hair upon the back, they discovered a general correspondence to him, and that in no particular whatever did they find any dissimilarity. This testimony, which, in most of

the circumstances mentioned by the medical gentlemen, is similar to that of other witnesses who were the friends or personal acquaintances of Dr. Parkman, may be admitted to have some tendency to prove, and perhaps to create a strong probability, that they were the remains of his person. But, however strong the probability, the sufficiency of the evidence, if it stopped here, to establish the identity, may well be questioned.

The testimony of Dr. Keep and Dr. Noble is more precisely to the point of identity, and may perhaps be regarded by you even as conclusive. Dr. Keep declares that he has not a particle of doubt, that the parts of the blocks of mineral teeth which were taken from the furnace were of his manufacture, and were made for Dr. Parkman. He states the various considerations which have induced this unhesitating conviction in his own mind; and he has exposed and explained to you his models, and exhibited to you how, and in what manner and particulars, the teeth which were taken from the furnace will conform to and correspond with them. The testimony of Dr. Noble entirely corresponds with that of Dr. Keep; who is sustained very fully, in certain particulars, by the testimony and opinions of Drs. Harwood, Tucker, and Codman. We have called, in the defence, Dr. Morton, an intelligent and skilful dentist, whose opinion, in some particulars, varies from that of Dr. Keep; but whether there is any real or substantial contradiction between them, or whether it really affects his testimony in any important particular, can probably be determined without much difficulty by those who had an opportunity of hearing the explanations and statements of the several witnesses.

Having thus barely adverted to the sources and character of the evidence, upon which the identity of the remains with the person of Dr. Parkman is attempted to be proved, it is not my purpose to argue or discuss it; but to leave the question as to the death of Dr. Parkman to your decision, without any additional remark. If the fact of his death is not established, there can be no occasion for further inquiry.

But, if the death of Dr. Parkman shall be determined by you to be an established fact, the Government are bound next to proceed and show, that it was occasioned by violence, or the unlawful agency of some other person. Here is required your careful and serious attention. Is it proved, beyond all reasonable doubt, that other than natural causes must necessarily have interposed to terminate his life? I

shall not now ask your attention to any of the parts of the testimony of the Government, by which they attempt to implicate Dr. Webster, as the perpetrator of the crime charged against him, but shall endeavor first to see, whether there is sufficient proof of the fact, that a crime has been committed; whether any personal violence, or unlawful agency of another person, was the cause of the death of Dr. Parkman.

Two circumstances have been mentioned, and will be relied on, to satisfy you that the death of Dr. Parkman was produced by violence; — by the infliction of blows with dangerous weapons, upon his person. I refer to the supposed fracture of the skull, and the perforation, or hole, found in the side of the body. And I shall endeavor to satisfy you, that there is no evidence relative to either of these, which can safely and necessarily lead you to any such conclusion. Indeed, they may very easily and readily be disposed of.

As to the supposed fracture of the skull, the whole suggestion rests upon the narrowest and most insufficient ground. Dr. Wyman has exhibited a portion of the skull-bone, which, upon its edges, affords indications of a fracture, though he did not hesitate to say, in answer to the inquiry of the Chief Justice, that though it was probable, or rather that there was an appearance that the fracture might have occurred before the bone was subjected to heat, there was nothing which would enable him decisively to determine whether it occurred before or after death. And he would not even affirm, that it might not have been after calcination. Dr. Holmes, one of the Professors in the University, who is equally competent with Dr. Wyman upon this subject, expressed himself very clearly of the opinion, that no satisfactory conclusion could be formed, from the appearance of the bone, whether the fracture was before or after it was subjected to fire. Upon such a state of the evidence, it would be absurd to pretend, that the fracture of this particular part of the bone of the skull is proved, beyond all reasonable doubt, to have been the cause of the death.

Next, as to the perforation in the side. It appears, from the testimony of Mr. Eaton and Mr. Fuller, that it was discovered by them almost immediately after the thorax was taken from the tea-chest. They may perhaps be mistaken in this; but I shall not stop to question their accuracy. The more material question is, How was it made, and how came it there? Dr. Woodbridge Strong, who examined the body several days after it was discovered, and after the medical examination made for the coroner's jury was over, tes-

tifies that the hole was a clean cut, apparently made with a knife; and, in his judgment, the blow must have been inflicted while the party was alive. But he is alone in this opinion. You have, on the contrary, the deliberate judgment of three intelligent and scientific medical gentlemen, — Drs. Lewis, Gay, and Stone, — to whom were specially assigned, by the coroner, the duty of making a full and complete examination; and you have been informed by them, with what vigilance, care, and accuracy, that duty was discharged. They made their examination for the express purpose of discovering, if possible, what was the cause of the death, and by what means it had been occasioned; and they made it at a moment when every circumstance, which could have any tendency to develop the truth, was watched with the utmost intensity. They saw this perforation in the side; and they carefully examined it. All of them tell you, unhesitatingly and in strong terms, that there was no knife-cut, or any cut, there; — that the flesh was soft, and the opening ragged and irregular, such as might easily have been made by a stick, or by the finger of one's hand; — that there was no indication in its appearance, either on the external or internal parts of the side, that the hole was made with a sharp or cutting instrument, or that any wound had been inflicted there upon the living man.

These opinions of the skilful and disinterested men to whom was assigned the special duty of the medical examination, ought to be held as entirely conclusive. But, even if it be not so, the disagreement between them and Dr. Strong is equally decisive upon a question where proof is to be made beyond all reasonable doubt. Whatever may be your conjectures or your suspicions, it is impossible that, in this contradictory state of the evidence, you should adopt a mere controverted, contradicted, and disputed opinion, as an absolute verity.

It is plain that you cannot attribute the death of Dr. Parkman to either of these causes. Can you find anywhere, or in all the evidence, the indubitable fact that he was killed by any human agent? Remember that it is not for the prisoner to discover or explain by what means Dr. Parkman lost his life; but it is for the Government to show, affirmatively and positively, that it was taken by the violent or unlawful agency of some other human being. The blows, the wounds, the mutilation, the evident efforts for the destruction and the annihilation of the body, do not show, nor have they any tendency to show, how the life was taken. All these appearances

might have been, and probably were, produced upon the body after the individual was dead. Injuries amply sufficient for the destruction of life were discernible in the remains, as soon as they were discovered; but who will believe for a moment, that the life was thereby, and in that way, destroyed? To take off a man's head with a saw, undoubtedly kills him, — to tear out his breast-bone, and remove all the inward parts of the body, kills him, — cut off his arms, his leg, and his thighs, and he will die, — hold his head in the fire till it is burnt to cinders, and he will perish. All these things manifestly occurred to the several parts of this body. But when did they occur? Was the head or were the limbs of the living man thrust into that narrow and contracted assay-furnace, of ten inches in circumference, and forcibly held there, until life was extinct? The proposition is too absurd, upon its naked statement, to deserve a moment's consideration. Or was the living man placed first upon the floor or upon the table of some murderous anatomist, and retained in that position, until his arms were chopped off, and his thighs were severed from his body? No one believes it. And yet these are the injuries and mutilations, by fire and by violence, which these remains distinctly manifested as soon as they were discovered, — the work and operation, most obviously and plainly, upon the body after death, of the agent who was struggling to destroy or annihilate it. The death must unquestionably be sought for in some cause antecedent to them all.

Do you not ask in vain what that cause was? After all the sources of inquiry have been traced to their utmost limits, and all means of investigation have been utterly exhausted, are we not still as ignorant as at the beginning, of the cause of death, as we were at the moment when light was first thrown upon these remains in the cavern beneath the Medical College?

Yet the Government ask you to affirm, upon your oaths, the truth of a fact, of which they are constrained to leave you destitute of proof. The form, and the averments in the indictment, clearly show their inability to supply you with the requisite evidence. The fourth count expressly declares, that the manner and the means of death are wholly unknown. How, then, can you be asked, in the midst of all this obscurity, — surrounded by uncertainties on every side, — to say that the death was certainly the result of violence and crime?

Can they ask you to draw the inference of an unnatural death from the facts, that he was alive and well on the 23d

of November, and that, on the 30th, the mangled remains of his dead body were discovered? You cannot safely do it. The facts are too remote from each other to justify such a rash conclusion. Take the case, frequently mentioned in legal treatises, as an illustration of the efficiency and convincing character of presumptive evidence, and see how widely it differs from the facts before you. A man is seen running from a house with a bloody sword in his hand. The spectators immediately enter the house, find a dead body on the floor, the fresh blood still flowing from a deadly wound made with an instrument corresponding exactly with a sword. The inference is irresistible; the cause and the effect are in such immediate proximity, that no mistake can exist, — he died of the wound which is found in his body. But here, the individual disappeared on the 23d of November, — a week elapsed before his remains were discovered. The interval afforded ample time and ample opportunity for producing all the appearances of injury and mutilation which have been discovered. Can you, upon the presentment of such facts, discern, — is there no reasonable doubt whether you can discern, — the cause which exists behind and beyond all these present and visible appearances? Death comes in ten thousand forms; if its approaches are sometimes lingering and slow, it often takes us suddenly by the hand, and relieves us at once of life. How are you to reach across the seven days which elapsed after the disappearance of Dr. Parkman, and discover, in the total absence of all evidence upon the subject, that he did not die a natural death, — that it did not reach him, as it often reaches the rest of mankind, suddenly and unawares? Are you so sure, — and sure, too, upon reasonable and satisfactory grounds, — that he did not come to the end of life in some unusual or strange way, which you cannot see, because of the thick darkness which often shrouds the ways of men, that you can truly determine that his death was the result of unlawful agency and criminal violence?

Be not influenced, in such a momentous decision, by the emotions of your own hearts, or by sympathy for the distress or suffering of others. If he who is gone had been our friend, — if he was most respected in the wide circle of his acquaintance, — if his absence has touched many hearts with sorrow, and been mourned over by afflicted friends, — all these considerations can furnish no palliation of a rash judgment, that is to peril the life, and everything that to him is dearer than life, of one whom the law, alike in its benignity and its justice, even yet presumes to be innocent.

The language of Lord Hale, "that he would never advise a conviction upon circumstantial proofs, unless at least the body has been found," has, in its substance and spirit, secured the approbation of all successive judges; and is, with slight but reasonable modifications, incorporated as a maxim into the criminal code of the common law. The same principle requires, — such is the language of authoritative expositors of the law,— that, upon a charge of homicide, even when the body has been found, and although indications of a violent death be manifest, it shall still be fully and satisfactorily proved, that the death was neither occasioned by natural causes, nor by the act of the deceased himself.

Apply this principle here, and demand this proof of the Government. I do not say to you, that the prisoner at the bar, or that his counsel, can explain all these appearances: they are not required or called upon to do so. It is far otherwise with the Government. They are bound to furnish proof of the homicide, or they must fail for the want of it. When you see that all the known and discovered marks of injury and mutilation could not only more easily be, but in all probability must have been, inflicted after death; when an excited man, who had wandered from his home in some sudden aberration of mind, might have fallen by the way-side in an apoplexy, by an affection of the heart, or from any of the ten thousand and hidden causes by which men are bereaved of life, — can you affirm with absolute confidence, that such mutilations and injuries, first observed seven days after the disappearance of the party, were the certain cause of his death, and that they were necessarily produced by the criminal agency of another person in the destruction of life? Are you irresistibly impelled to such a result? And can you grope through the thick darkness which envelops everything pertaining to him from the first moment he was withdrawn from the public view, to the conclusion, that George Parkman died no natural death, but fell by the violent hand of his fellow-man?

I submit this matter to your calm inquiry; and if the end of that inquiry be, that there is only a probability, — no matter how strong, so only that it falls in the slightest degree short of clear and absolute proof, so only that you cannot say, beyond all reasonable doubt, that Dr. Parkman was slain, — it must terminate this investigation; it must put an end to this trial, and secure at once to the prisoner the right to a verdict of acquittal.

But, Gentlemen of the Jury, I must now leave this topic,

and pass to the consideration of other and different subjects. Should all the objections which I have made be overcome, and should you arrive at the conclusion, that it is proved beyond reasonable doubt that Dr. Parkman was killed by some human agent, it becomes essential to ascertain what was the crime which was committed by the person who was guilty of the homicide.

In considering this question, I must, for the present, assume that the homicide was committed by the prisoner at the bar; and I must assume, also, for the purposes of this examination, the existence and truth of the various facts of which the Government have supplied you with evidence. But I earnestly desire that you will neither misunderstand our position, nor deduce from the fact, that this argument is presented to you by his counsel, any erroneous conclusions as to the concessions of Professor Webster. You will understand, distinctly, that he denies all participation in the homicide of Dr. Parkman; that he pleads not guilty to the whole, and puts the Government entirely to the proof of the charges against him. Still his counsel cannot foresee what your conclusions may be; and if the result of your deliberations should be, that the proof supports the allegation that he did commit the homicide, it devolves upon them to show to you, that, under all the circumstances before you, the killing of Dr. Parkman could not have been murder, but, at most, could have constituted manslaughter only.

The distinction of the law, between the crimes of murder and manslaughter, were very clearly stated and illustrated by the counsel associated with me, in the remarks which he submitted to you in the opening of our defence. I need not repeat them. The simple consideration which divides the two crimes is malice aforethought. With malice aforethought, homicide is murder. Without it, it can be no more than manslaughter.

Now, I submit to you, that, if Dr. Parkman was in fact killed by the prisoner at the bar, it was under such circumstances of extenuation as to exclude the idea of legal malice, and to reduce the offence from murder to manslaughter. And it is a sufficient circumstance of extenuation, if the homicide was committed in heat of blood upon reasonable provocation, or in sudden combat.

It is not necessary, that the circumstances of extenuation should be proved by the accused. They may be derived from any and all parts of the proof, — from the evidence of the Government, as well as from that of the defence, —

from the cross, not less than from the direct, examination; and they may be inferred or deduced from any facts in the case, however the facts are established.

I propose, then, to call your attention to all such portions of the evidence in the case as may be supposed to bear upon the manner in which the homicide may have been committed, and the circumstances under which, if it occurred at all, it must have taken place. And, if the result of such an examination shall satisfy you that it occurred under circumstances of extenuation, in heat of blood, upon reasonable provocation, or upon sudden combat, it will be your duty to return a verdict for manslaughter only.

I am aware, however, that the Government mean to insist, that the homicide was premeditated; and that their evidence will warrant the conclusion, that it was the result of a previous plan, designed and arranged by the prisoner at the bar, for the purpose of accomplishing it; and, therefore, that the killing must have been upon what the law denominates express malice. It was so stated by the Attorney General, in the opening of the case for the Government; and he now reaffirms, that he means to maintain it.

I shall not deny that the consequence follows, if the proposition is established. I shall, therefore, before going into a consideration of those extenuating circumstances, which I shall claim to be sufficient to reduce the homicide from murder to manslaughter, first consider the proposition from which the Government intend to show express malice, and shall endeavor to satisfy you, that it rests upon no sufficient foundation of proof, and that it cannot be true.

The general statement, on the part of the prosecution, is, that Professor Webster deliberately planned the homicide, devised the means, and seduced Dr. Parkman to the Medical College by false pretences, for the purpose of executing it.

One important fact is now agreed to by the parties, viz.: That Dr. Parkman went to the Medical College, on Friday the 23d of November, between the hours of one and two o'clock, upon a mutual appointment, for the transaction of a certain matter of business between them. The statement of Professor Webster shows, that he invited Dr. Parkman to meet him at that place on that occasion, for the purpose of paying to him a certain sum of money, the amount of which had been previously arranged and agreed upon by them; and he adds to this statement, that, in pursuance of their appointment, Dr. Parkman appeared, and produced a part of the papers relative to the business, — received the money, —

closed the transaction, and left the College. All this is denied on the part of the Government. On the contrary, they allege that no money was paid; that Dr. Webster intended to pay none; that he was wholly destitute of funds, with which any such payment could have been made; and that the proposal to pay was only a false and fraudulent pretence to induce Dr. Parkman to go to the lecture-rooms of the Medical College, where the wicked and atrocious design to destroy his life could be effected.

The proof of this extraordinary and startling proposition, if it exists at all, lies in a very narrow compass. It consists of the evidence tending to show the supposed inability of Dr. Webster to make the payment, which he professes to have made, and in the notes subsequently found in his possession, upon which it is claimed there was due a much larger amount than the sum which is alleged by Dr. Webster to have been paid.

Mr. Pettee, who was the agent of Dr. Webster for the sale of the tickets to his course of chemical lectures, has informed you of the amount which he collected, and in what manner it was paid. It appears satisfactorily from other evidence, the accuracy of which is admitted, that, with the exception of forty-five dollars, — to which sum for another purpose I shall presently allude, — the whole of the money received from Mr. Pettee was deposited in the Charles River Bank, and it was either drawn out upon small checks, or remained still in deposit, at the time Dr. Webster was arrested. None of these facts are denied by him; nor does he claim that the payment to Dr. Parkman was made from the funds he derived from the sale of his tickets.

The testimony of Dr. Henchman and of Mr. Smith does not seem to be of material importance. On the morning of the 23d of November, — the same day on which Dr. Webster asserts that he made the payment to Dr. Parkman, — it appears that he received the sum of ten dollars in bills, for a check of the same amount which he had drawn upon the Charles River Bank. He had a right to draw the check, for he had funds there; and it would have been paid, if it had seasonably been presented. The funds which he deposited in the bank were those which were required for his daily use; and it was but in the usual course of his ordinary transactions, that he drew the check, and received the money of Dr. Henchman. It had nothing to do with the payment to Dr. Parkman.

Mr. Smith had a small claim upon him, for which payment

was requested sometime during the summer; and delay of its collection was asked, until funds should be received from the sale of the tickets to the annual course of lectures. This, like the transaction with Henchman, had relation to his domestic expenses; and it was not unnatural or peculiar that he should seek the postponement of payment, until the receipt of those funds which were usually appropriated to such purposes.

But, though Dr. Webster asserts that he made the payment to Dr. Parkman, it must be admitted, that we have produced no evidence of the source from whence the money was derived. I am free to admit, that it is impossible for him to produce such evidence; not because he did not have the means of payment, but because such funds were derived and preserved in such a manner as to render the production of proof in relation to them altogether impracticable. They were the accumulation of many days, — the savings of necessity for an inevitable hour, of which he well foresaw the approach. You can yourselves easily perceive how all this was. You know the relations between the parties. Dr. Webster was the debtor, and Dr. Parkman the creditor. The latter had made up his mind resolutely in reference to the debt; and the latter knew of, and appreciated the stubborn force of that resolution. Dr. Webster was not insensible that his transactions in relation to the minerals, particularly with Mr. Shaw, had given offence, and might perhaps be used to his prejudice and disadvantage. He had vindicated his conduct in a long letter to Mr. Shaw, and subsequently had repaid him in full the money he had received. But all this had not appeased the feelings of his creditor; and he knew that the time was coming, and speedily too, when he must answer to his demands, — when he could no longer ask for delay or forbearance, but must be prepared to meet promptly the claim, — I will not say, the inexorable — but the earnest claim of his determined creditor. He felt that he must be prepared for that great day, — for the day of such a payment is great to a man in a situation like that of Dr. Webster, — with a large family occupying a respectable social position, necessarily involving the formation of habits of no inconsiderable expense. With whatever ease or convenience such sums of money may be raised by others, it is no light thing to him. He cannot do it at once. His gatherings must be comparatively slow; he must strain himself to save whatever he can from this quarter, and whatever he can from that; a fifty-dollar bill it may be at one time, and a twenty at another. And it was in this way that the money ultimately paid to

Dr. Parkman was hoarded up; gathering it where he could, and saving it whenever opportunity would permit,—knowing that he must soon be prepared,—for it would soon be in vain to hope for further postponement. It is impossible, as all of you must readily perceive,—utterly impossible to bring in evidence all of the sources from which funds so gathered and collected were derived; and I cannot believe you will suffer the most grievous and offensive of all imputations to rest upon any party, because his daily or weekly savings are not fortified by the formalities of legal proof. In the very nature of things, such proof, in relation to transactions like these, cannot be produced.

If it be asked, why, when these savings were being so patiently and laboriously made and preserved, he did not, at least, make partial payments to Dr. Parkman, does not their relation to each other furnish a ready and satisfactory reply? It would not be expected of such a debtor, that he would be particularly forward to meet the demands of so pressing a creditor. All that Dr. Webster could have intended to do, was to prepare himself fully to meet Dr. Parkman, when he should come with a purpose which could no longer be resisted. That time at length arrived, and the payment was made, on the 23d of November, in the Medical College.

These are the simple circumstances respecting the money and its payment, as far as I am able to give you details respecting them. If the narrative is not fully proved, some few corroborating circumstances will convince you that it is no fabrication of the imagination. Of the money which Dr. Webster says he paid to Dr. Parkman, his uniform statement has been, as you will remember all the witnesses have testified, that there was one bill of the denomination of One Hundred Dollars, of the New England Bank. Now Mr. Pettee told you, that, upon one occasion, he received, from the teller of the New England Bank, one hundred and ninety-five dollars, in bank bills, which he paid to Dr. Webster; and, though he cannot recollect either what bills he received or the denomination of them, you will have no doubt that the bills paid by the teller were of his own bank. From this parcel was taken the Hundred-Dollar Bill, which was kept by Dr. Webster; while an equivalent amount of that which he had been saving, for his approaching exigency, was used for the deposit in the Charles River Bank.

There is one instance of direct saving, which the evidence of the Government enables me to point out to your attention.

On the 24th of November, Mr. Pettee paid to Dr. Webster $195. The following day, the books of the Charles River Bank show a deposit of only $150. The balance of $45 was reserved, and went into the little mass of savings, which were being prepared for the payment to Dr. Parkman.

I know that the Attorney General has stated to you, that Dr. Webster has formerly given an account, differing from this, as to the source from which he derived this money; that he stated that it came from the sale of the tickets to the students, for their attendance upon the course of his chemical lectures. The only evidence to sustain this assertion is to be found in the testimony of Mr. Brown, the toll-keeper. Mr. Brown met Dr. Webster in Cambridge street as he was returning from the College, and they walked together to the bridge; and undoubtedly Dr. Webster made some incidental remark on this, in connection with their conversation upon another and wholly different subject. An Irishman had a short time before passed to Mr. Brown a twenty-dollar bill in payment for a one-cent toll. The circumstance was thought strange, and excited the suspicion that he might have forcibly obtained it from Dr. Parkman. The bill was retained by the toll-man in order that it might, if possible, be identified. He now asked Dr. Webster, to whom it had been shown, if he could recognize it. The answer was that he could not; and Mr. Brown understood Dr. Webster to say in addition, that the money he paid Dr. Parkman came from the students. But surely Dr. Webster could not have intended to convey the idea, that all, but that only a part, of it came from that source. This must be apparent from the fact, that he had received a considerable portion of the money at a much earlier date, and that a large share of it was at once distributed. Two hundred and fifty dollars was paid immediately by Mr. Pettee to Dr. Bigelow. The one hundred and ninety-five dollars was received afterwards; and, of the latter sum, one hundred and fifty dollars was the next day deposited at Cambridge, as the testimony of Mr. Pettee and the records of the bank books show. It is therefore perfectly obvious, that the idea which Dr. Webster meant to convey to Mr. Brown related to his inability to recognize the various bills, rather than to any indication of the precise source from which they were derived. But I do not think you can, or that you ought to, attribute any importance to this casual conversation. You will not suppose that the toll-keeper is a man to whom Dr. Webster would have been likely to state his pecuniary affairs with much particularity. Besides, if he

did not intend to speak with entire precision and exactness, — and there can be no pretence for saying that there was any occasion to do so, — the payment of the One-Hundred Dollar Bill of the New England Bank, and the forty-five dollars which was reserved from the deposit of the 15th November, both of which sums did, in fact, come from the students, would be quite sufficient to explain his meaning in this casual, short, and unimportant conversation.

But the Attorney General apprised us, before the evidence was closed, that he should insist, that Dr. Webster had no right to the two notes which were found in his possession, because, even after the alleged payment of $483.64, there would still remain due upon one of them a sum not far from $512.

There is no evidence in the case, except the papers themselves, which has any particular bearing upon this question. We must take everything as we find it. The notes were found in the possession of Dr. Webster; and that bare fact of possession would, under ordinary circumstances, create a presumption that he was entitled to hold them. The contrary, if it be insisted on, must be proved. The possession is sufficient title until it is rendered at least doubtful by proof. Dr. Webster does not pretend, and he never has pretended, that Dr. Parkman went to the College to receive any other than the sum of $483.64; neither more nor less than that. Everything else was arranged between them. The memorandum taken from his pocket at the time of his arrest, and now put into the case by the Government as evidence, states that there was such an arrangement; and it is but fair and reasonable, that the prisoner should now have the benefit of the statement. No matter, then, that the amount found due by a computation upon the notes, according to the indorsements upon them, will not correspond with the amount alleged to have been paid. It is not to be expected that it should be so; for the parties, having had some differences before, had agreed in advance as to the amount that should be paid upon this occasion. It must have been so; else, why did Dr. Parkman have both notes with him? If one only was to be paid, why carry them both? He did not carry all the papers; the mortgage was kept back, but he had both notes with him. And I appeal to you if it be not reasonable to say, that they were there because the parties had before come to an arrangement which required them both to be brought forward by Dr. Parkman.

You cannot fail to observe, in this very connection, another

very striking, because altogether incidental, corroboration of the statements of Dr. Webster, as to what took place at the interview in the College. He has uniformly stated, that the mortgage was not given up, — that Dr. Parkman agreed to see himself to its discharge, upon the records, in Cambridge. And now here upon this trial, you see, produced from the possession of the family of Dr. Parkman, the identical paper which Dr. Webster says Dr. Parkman took upon himself to discharge at some subsequent day.

Look, then, most carefully at the whole series of transactions, and determine for yourselves, if the simple narrative of Dr. Webster must not be substantially true. Mark the incidental, but strong, corroborations which accompany and fortify it. It is beyond all question, that the creditor was pressing for payment. He went down to the College to receive his money, — he carried the notes to give up in exchange for it, — the notes were given up, the mortgage was retained, and it is now produced from the possession of his family, — and if not all, yet some portion of the funds came from the students attending the chemical lectures.

Now I submit to you, with the utmost confidence, if the explanations which are offered are not abundantly sufficient to refute the extraordinary assumption of the Government. I do not say that the argument is absolutely conclusive, because it must be admitted, that the proof of the facts relied on is in some particulars incomplete and imperfect. But is there not amply sufficient to indicate to you the way, and lead you to the truth, — to repel the awful and fearful imputation of the Government, that the prisoner at the bar, destitute of funds, and utterly incapable of meeting the payment to Dr. Parkman, deliberately contrived and calmly premeditated his destruction, by the most atrocious crime which can be committed against the rights of humanity? And yet, you must reject all these reasonable explanations, and sustain, to its fullest extent, this startling hypothesis of the Government, or you cannot affirm that the homicide, if it ever took place, was of malice aforethought. I beg you to weigh it well, for on it are the issues of life and death.

At this point, the hour of adjournment, two o'clock, P. M., having arrived, Mr. Merrick suspended his address, and the Court adjourned to half-past three.

Afternoon Session. — Friday, March 29th.

The Court came in at half-past three o'clock, and Mr. Merrick immediately rose and resumed his closing argument for the defence.

If I have succeeded, Gentlemen of the Jury, in repelling, as I trust I have done, the imputation of express malice, I desire next to call your attention to those circumstances which must disclose the real character of the transaction, if we are to suppose that a homicide was committed on the 23d of November. And here you perceive, that we must rely, for any judgment we may form, altogether upon the development of collateral and surrounding circumstances. If Dr. Parkman died under the hands of Dr. Webster upon that occasion, no human voice can relate the transactions of the hour, except the voice of the prisoner at the bar; and his voice must be silent. Still, you are judges of the fact; and you may draw inferences and conclusions from circumstances, more or less remote, which will fully enable you to determine what must have been the course of proceedings between these parties, when no human eye was upon them. And I shall contend, that the proceedings which occurred at that scene of death, if death there were, must have been such as to afford those extenuations which reduce the homicide to the crime of manslaughter.

What was the relation of these parties to one another, and what the circumstances under which they met on the occasion which — upon the supposition we now assume — was to be to one of them the last hour of life? You know their relation of debtor and creditor, which for a long time had subsisted. You know that Dr. Parkman had become, to no trifling extent, exasperated against Dr. Webster, on account of certain pecuniary transactions, which he denounced as unjust and dishonest. And you know, that, under that imputation of injustice and dishonesty, he pursued him with an unchanging resolution. I speak in terms of well-measured moderation. So early as the first conversation with his brother-in-law, Mr. Robert G. Shaw, which has been narrated to you, the feelings of Dr. Parkman were strongly excited against the prisoner. And I believe I am fully warranted in saying, that, from that hour to the last in which he was known to have been alive, that excitement never subsided, but continued rather to increase. In pursuit of the one object, of which he never permitted himself to lose sight, he had several interviews with Mr. Pettee. He made efforts, which proved to be

fruitless, to realize through him the money which was coming to Dr. Webster from the sale of tickets to the students who attended his annual course of lectures. He was evidently disappointed and chagrined at his failure; but he would not be deterred from persisting in further efforts. He had said, emphatically, to Mr. Shaw, that he would have his money. Mr. Shaw kindly essayed to calm his mind, and induce him to give over his purpose. Both Mr. Shaw and Dr. Parkman occupied a position, in relation to pecuniary affairs, which rendered to them the amount of this small indebtedness a matter of comparative indifference. It was not the amount which made it to Dr. Parkman an object of importance; he never could have felt its loss. And, under other circumstances, he would undoubtedly have parted freely with much more, perhaps, to Dr. Webster himself. But their personal relation was now changed; anger had become one of its elements. Disappointed certainly, if not chagrined, by his want of success with Mr. Pettee, he could not forbear the pursuit, and he turned to the employment of other expedients to enforce the payment of his claims. He would not resort to the law, nor seek the aid which that might afford him; a writ upon which property could be attached, would not give him so satisfactory a remedy as he could find in his own energy of pursuit. He seems to have believed, that he could adopt some mode of proceeding for himself, I will not say by harassing the feelings of his debtor, by which he should be able to obtain the money which was due to him. Accordingly his pursuit was constant and unremitted, — his purpose unchanged and inflexible, — his manner never calm or tranquil. The message which he sent by Mr. Pettee to Dr. Webster, if it ever reached him, could not fail to have produced some corresponding exasperation; and that that message, or something like it, and perhaps even distorted and exaggerated, did reach him, I think cannot be questioned. The terms upon which they held intercourse with each other could not but have been disturbed by constant irritation. It may be admitted, that Dr. Parkman did not use the profane language which was attributed to him; but who can say, that his messages were not reported in the coarse and vulgar terms which too often find their way into common parlance? So early as Monday evening of the week of the fatal 23d of November, Dr. Webster, at a late hour, in the laboratory where he earned his daily bread, while reading some chemical book, as Littlefield tells you, was, I will not say intruded, but called upon, by Dr. Parkman. An unsat-

isfactory conversation, of which you have only a partial account, took place between them, and the latter left with a menace upon his lips. "Something must be done to-morrow," was his language, as he departed. On the ensuing morning, as you learn from Littlefield and Maxwell, a note was despatched to him by Dr. Webster. I wish the letter could have been here, and I had hoped that we should find it among the multifarious papers and documents produced by the Government. But it is not produced, and no one has testified to its contents; yet it cannot be doubted, that it related to the business upon which the parties were then so frequently meeting. According to the statement upon the memorandum, taken from Dr. Webster at the time of his arrest, and read here as evidence, Dr. Parkman entered the College during the lecture on Tuesday, and, when it was over, arranged for a further interview on the ensuing Friday. Still he was not satisfied. Other opportunities for a meeting were diligently sought for. You see him abroad in the highways watching with unabated assiduity the approach of Dr. Webster, or his departure from the College, and inquiring of the toll-keeper at the bridge respecting his passages across it.

On Thursday, the inquiry was renewed at the bridge; and, finding that Dr. Webster had not been seen to come into Boston, he immediately procured a conveyance, and proceeded to his house in Cambridge. Whether they there met, or, if they did, what transpired between them, you have no means of determining. The next day came, and with it the appointment which was made at the house of Dr. Parkman for their meeting at the Medical College at half-after one o'clock, that the money might then be paid, and the business, which had so long perplexed them, be brought to a close. It is not difficult to conjecture or understand what must have been the feelings of both of them at the close of a pursuit so constant and unintermitted, so pressing and urgent, as had been that of Dr. Parkman. Is it possible that men, bearing such relations to each other, and meeting under such circumstances, should be composed and deliberate in their conduct? Is it strange or unnatural, that one who had felt himself personally injured by what he regarded as the dishonesty of his debtor, and who had taken, not the law, but some mode of redress supposed by him to be more effectual, into his own hands, should now, in the very moment of the consummation of all his efforts, give to his deep-seated convictions an expression of too great ardor and vehemence? Is it strange, that the feelings of a debtor, who had been so restlessly

pursued, should now, when fully prepared with funds to stop the course of that creditor, seek some vent in language of retaliation? — that all these causes of irritation and excitement should find words of anger, to be followed by personal collision? — or that such personal collision should terminate in mortal strife? I am arguing upon probabilities drawn from the nature of man. There is in the moral, as in the physical world, a regular and constant succession in the course and order of events. Passion, when uncontrolled, assumes a mastery over men, and sways them at its will. The action of the mind, under any predominating impulse, is governed by laws as regular as those which control the motion of the planets in their spheres. It cannot, therefore, be unreasonable to suppose, that men, meeting under the circumstances I have described, should fall into altercation, — that altercation should be followed by blows, — and that blows should be followed by death, because moral, like physical, causes will always produce their natural effects.

The parties did meet under these most untoward circumstances, — in this state of unhappy excitement; and we are now, in pursuing this part of the argument, to suppose that the interview was closed by the death of one of them. But if it be assumed that this were indeed its termination, it will not be pretended that we have any direct evidence of what transpired between them, or of the means by which that end was produced. Those means, therefore, can be discovered only by the exercise of reason upon the facts which surrounded their meeting. The creditor was certainly there, pressing on with a firm, if not a rigorous hand: the debtor, if he could not object to the legal validity of the claim, might yet have been inflamed by passion to resistance. Even justice may sometimes be too strict and exacting in its requisitions. The claim of right may seem, at least to him against whom it is preferred, to be urged too far, and to justify retaliation against what is deemed the wrong of an aggressor. Words will engender blows; and violence may be followed by the most fatal consequences.

Since we can reason here only from probabilities, it cannot be uninstructive to inquire, which proposition is most likely to be true, — that there should, under such circumstances, have been sudden altercation, bringing the parties to mutual combat, and carrying them from combat to death; or that Professor Webster should previously have entered into a cold, slow, and fearful calculation, for a sin like this, — have prepared the way, — have seduced his victim into

the snare, there alone in cold blood, and with deliberate hand, to slay him? It is impossible to doubt what answer should be returned to such interrogatories as these. No; the last proposition cannot be true. The annals of crime tell no such revolting story as that. Men of such character, and in such a position as his, do not, at a single effort, leap away from all the influences of education, social life, and religious instruction, and commit at once the highest and worst crime which can be perpetrated against their fellow-beings. And yet you are asked to make this your final decision. You are asked, — though the scenes of that fatal hour, if fatal it were, were unseen, and its secrets are now all untold, — to believe, against these amazing probabilities, that such men, meeting, hot and excited by all their former altercations, and under the influence of passion and resentment, engendered by long-continued irritations, did not, in the heat of blood, rush into mutual combat; but, that the homicide was the result of deliberate preparation, — was, in its strongest sense, with malice aforethought. There is no other alternative. You must judge between deliberate design and sudden exasperation; and I leave to your solemn consideration which of them shall be adopted.

You are not to go forward beyond this period of time to determine the character and quality of the act of crime from subsequent events; you must stop and decide upon it there. Nothing which transpired afterwards, could change its quality, since it was then already complete. It was, then, the result of cold, calculating premeditation, or of sudden violence and anger, when there was a fearful heat of blood between these exasperated parties; and it is your peculiar province to determine, from a full consideration of all the surrounding circumstances, to which of these causes the homicide is to be assigned.

But I repeat, that you must not look beyond the period of time when the act itself was complete, in order to ascertain and determine its character. It is easy to show you that this proposition is correct. The crime consists in the homicide, and is consummated when life is taken. You can find in no subsequent events or proceeding, a cause of the act or an element of the crime; for they are only its painful and distressing consequences. Should your first impression be otherwise, — should it incline you to take up, in this connection, the facts concerning the disposition of the body, when life was extinct, — the progress of the mutilation, — the attempted destruction, — or the rude disrespect shown to the

mangled remains, — I pray you, for one moment, pause and consider.

It is impossible to know how men will conduct themselves under the domination of passion, in its highest excitement; in the very moment which succeeds to the consummation of some event of overwhelming magnitude. We should hope, and perhaps even we should expect, that, if parties like these came to combat, and the combat went on until it was closed by death, the survivor of the fatal struggle, still in the heat of blood, would have rushed from the place of combat, and exclaimed to the first person whom he met: — "God have mercy upon me! I have killed my friend! From angry words we came to blows: — fuel was added to the flame; — and in the heat of passion I smote him to the earth." I say, we might have hoped that it would have been so; but who can be sure that it would? Professor Webster occupied an important position, — was a man of good standing in society. He had a wife and daughters dependent upon his professional labors and ability; he was poor; and all before him might look like ruin and desolation. While his blood was hot and his passion high, and his victim just slain, suppose that he commits one rash act more? There, surrounded as he was, by walls which excluded the presence of all witnesses, and shut out all human observation, the temptation might come upon him to conceal; and the mutilation of the body would mark the first act in the process of concealment. From that moment, all disclosure was too late. The accepted time of salvation, by an open, public disclosure and confession, was past; and all that ensued was but the necessary consequence of the first false step, taken after his brother ceased to be a living man. If the temptation of concealment unfortunately triumphed, all the rest followed as a natural, perhaps as an inevitable, consequence. The attempt to avert suspicion, — to shut out proofs, — to turn away inquiry, would all succeed in the train of events, but as mere matters of course. It will account for the locking of the doors, — the false statements respecting the interview, and might prompt even the writing of the anonymous letters, to blind the police, or avert their eyes from the region of the Medical College. It will, to a considerable degree, account also for that general composure, even though it were interrupted, in some few instances, by an observable agitation, which, as you have learned from the testimony, characterized the demeanor of the prisoner down to the day of his arrest.

Wrong we may admit all these subsequent actions, arti-

fices, evasions, and devices to have been. But they were the natural, though deplorable, fruit of that first impulsive and ill-judged movement, which attempted to throw over a fatal event the darkness of an impenetrable concealment. But it is because they are its consequences, and not its cause, that all these subsequent acts must be rejected from your consideration, when you come to characterize the original act of criminality.

Review, then, with the care which it deserves, the testimony and the evidence, in all its parts, and in its various aspects. See the relation in which these parties stood to each other, — the pursuing and the pursued. How natural, that it should finally prompt to mutual resistance, — that combat should follow, — that, in the suddenness of passion and in the heat of blood, life should be lost! And, if it must be, against the protestations and denials of the prisoner at the bar, that you shall feel yourselves constrained by the evidence to determine that he was guilty of any homicide, I appeal to you if all these probabilities, — all the just inferences from every surrounding circumstance, — do not show clearly and satisfactorily to any reasonable mind, that the crime could not have been premeditated murder, but must have been extenuated, by heat of blood, upon sudden combat, into that still great, though less dreadful, crime of manslaughter.

I must now, Gentlemen of the Jury, leave this subject, and pass to the consideration of other and very different questions. But, before I enter upon a consideration of the evidence which bears directly upon Professor Webster, and by which it is attempted to connect him with the commission of the homicide, I wish to call your attention to that technical defence which has been stated and explained to you by the counsel associated with me. This involves the consideration of the indictment, and the various averments contained in it, — the extent of the obligation of the Government to prove those averments, — and the sufficiency of the evidence to support the charge as alleged in all or in any one of the counts which it contains.

The first and second counts in the indictment are, substantially, and for all practical purposes may be regarded as precisely, the same. In the first, the assault and mortal stroke are alleged to have been made with a knife; in the second, they are alleged to have been made with a hammer.

While the authorities, which have been read to you, show that the law requires that the instrument by which the homi-

cide was occasioned should be described in the indictment, they are equally clear in the statement, that the proof need not, in this particular, exactly correspond with the averment; that, if the homicide be alleged to have been caused by any described instrument, proof that any other instrument capable of producing the same, or a similar effect, was used, will be sufficient to maintain the averment.

The indictment may, therefore, be considered as alleging, generally, in each of the two first counts, that the homicide was caused by striking with an instrument capable of inflicting a mortal blow. And it may be conceded, that any evidence which would support either would support both of those counts.

The third count alleges, that the assault and mortal blows were made with the hands and feet of the defendant, and by striking and beating the deceased, and by throwing him with force and violence upon the floor. As there is no evidence in the case, which is relied on to support or maintain the indictment in the form or manner in which the offence is declared in this count to have been committed, it may be entirely dismissed, without further remark.

The fourth count alleges, that the defendant made an assault upon George Parkman, and "in some way and manner, and by some means, instruments, and weapons, to the jurors unknown, wilfully, feloniously, and of malice aforethought, did deprive him of life."

Now, we claim that the law has distinctly prescribed what formalities shall be observed, and what averments are necessary and indispensable in an indictment for murder. Upon this subject, we present to you our views; but you will receive full and ample instructions from the Court, and by those instructions you will undoubtedly feel it your duty to be governed. The Constitution of the State ordains, that all offences shall be described in all the accusations to which its citizens shall be held to answer, fully, plainly, substantially, and formally. The crime of murder, though made capitally punishable, is not particularly defined in any of our statutes; but its definition, and all prosecutions, and modes of proceeding against parties who may be charged with its commission, are left to be ascertained from the provisions and principles of the common law. Now, we contend, that that law has clearly and emphatically fixed and settled what are the essential and indispensable formalities and averments in an indictment for this offence; and that a description of the manner in which the death was produced or occasioned is

one of those essential and indispensable formalities and averments. We have called the attention of the Court, in your presence, to those legal authorities which we think fully sustain the proposition we assert. I shall not, of course, read them to you again, but content myself with a simple re-statement of the position we assume. The Government must make its accusation in conformity to the requirements of law, or the party charged will not be bound to respond to it.

With respect to this fourth count in the indictment, we insist that it is fatally defective, because it does not set out or describe the manner of the death; and, therefore, that it is not competent to the Government to offer any evidence, or to apply any part of that which has been produced to support it. All its averments taken together amount to no more than a declaration, that Dr. Webster killed Dr. Parkman by some of the possible means, or in some of the possible ways, by which death may be occasioned, — as by strangling, poisoning, drowning, or by personal force and violence. To which of these, or of others unenumerated, is the prisoner under this count of the indictment to prepare himself to answer, — the fire, the water, the knife, or the poison? And yet he has a right to know, from the plain and formal averments of the indictment itself; for the right is accorded and secured to him by the laws of the land.

While this right is thus fully accorded to the accused, the most ample provisions exist, on the other hand, by which the Government may always seasonably guard against any accidental or possible variance between the state of the evidence upon which the presentment is made by the grand jury, and that which is disclosed or developed upon the trial. There is no limitation to the number of counts which may be contained in an indictment. They may be extended, as you were told by my learned friend, as far as ingenuity can diversify or multiply them; the charge may be set forth in every form, and with every averment of which the mind can entertain a conception. But when the presentment is finally made, the Government is to be held strictly and precisely to its own averments; and the accused is to be tried upon the exact allegation of the several counts. If those allegations cannot be proved, he cannot legally be convicted. The Government cannot depart from or abandon its specific and formal averments, and resort to loose and indefinite generalities, or, under such a naked but comprehensive statement as this, that John W. Webster murdered George Parkman, lay a foundation for conviction in the proof of facts, of which no notice is given in the description of the indictment.

If these propositions are correct, it will follow as a necessary consequence, that a conviction can be justified only when the evidence is sufficient to support and maintain the averments and allegation in some one or more of the counts; and that it must be applied to those only to which it is adapted. If, for instance, you should be satisfied, in the present case, that the death of George Parkman was caused by the infliction of a blow or stroke, either with a knife or a hammer, it would be sufficient, upon the principle which I have before mentioned, to maintain either the first or the second count in this indictment; but it would not be applicable to, nor would it maintain, the third.

Let us now proceed to consider if there be any evidence before you, which will support the averments contained in the two first counts, — any which is sufficient to show, that the death of George Parkman was in fact caused or occasioned by the hammer or knife, according to the declaration of the indictment. These essential averments must be established beyond reasonable doubt. Are your minds satisfied with the proofs? Can you safely affirm, that you know, or that you have reasonable cause of belief, that these instruments, or either of them, or any like them, were the means by which the homicide was committed? The grand inquest, it is plain, were not quite so certain of that; and hence their insertion of averments, that it was caused in some manner, and by some means unknown. But no matter what their opinion was; you have a judgment to form for yourselves, according to the light of your own understanding.

The only evidence tending, in any degree, so far as I can perceive, to show that the death of Dr. Parkman was occasioned by the blow of a hammer or the thrust of a knife, or by striking with any other instrument, is the testimony of Dr. Wyman relative to the fracture of the skull; and of Dr. Strong concerning the perforation in the side of the body, which he supposes may have been produced by the clean cut of a knife. This testimony I have had occasion already, in the early part of my argument, fully to examine and consider. And I trust that you were abundantly convinced, that it failed altogether to establish either the one or the other of these facts, — the fracture of the skull, or the stab in the side. I am sure I need not, and I will not, renew the discussion. But I will adjure you not to presume that either of these weapons was the instrument of death, because it is not possible to discover what other means were employed, if these were not. It is a fact for the Government to prove, and to prove

beyond reasonable doubt, because they have chosen distinctly to assert a special "manner of the death." It does not devolve upon the prisoner to show that the homicide was not according to those averments, nor to supply suggestions or conjectures how otherwise it might have been. Yet it would not be difficult to point out many methods, more or less probable, to which resort might have been had. Remember that the prosecutors insist that the homicide was upon premeditation. If it was so, the means were prepared in advance. It was no chance matter, upon such a supposition, that he seized upon the knife or uplifted the hammer. But these were dangerous weapons, which a cool calculator might think too likely to leave the marks of their violence behind them, — to scatter the blood or the brains upon the floor or the wall, there to remain the silent witnesses of death produced by violence. Did not the perpetrator rather strangle or suffocate his victim? Was not his breath instantly stopped by the prepared lasso? Was it impossible that he was seized, and held while liquid poison was poured down his throat? Might not advantage have been taken of his known rapid pace, by providing secret means to insure his fall, as he rushed down the steps? Are these, or are all of these, unreasonable suggestions of possible or probable occurrences? We are in the broad field of conjecture; not more so, however, in starting these suggestions, than is the Government in its hints and pretensions concerning the knife and the hammer. It is all uncertainty. No rational man, as it seems to me, can honestly affirm that he is convinced beyond reasonable doubt, that any particular means, or any particular instrument, was the cause of death. He may believe in the homicide, but he must confess his ignorance of its immediate cause.

This difficulty and this objection are felt and appreciated not less by the prosecutors, than by us in the defence; and therefore it was that you were told by the Attorney General in his opening, that, if he were to rely upon his own judgment alone, he would prefer to rest the issue exclusively upon the fourth count, — that broad, all-embracing, and comprehensive declaration, that the homicide occurred in some way unknown. This would, indeed, relieve him from the legal necessity of proving more special and particular averments; but it is no poor comment in advance upon the insufficiency of the evidence in his possession to establish satisfactorily the "manner of the death." I do not doubt his sincerity, when he told you that he would regard a decision, that a conviction could not be had under such a declaration,

as a reproach to the law. It might, or might not, be a reproach. I shall not stop to inquire, whether it would be the one or the other; for it is not the question before you. We are not to determine if the rule be wise; but it is our duty to see if it is an established principle of the criminal code. If it is, we are all bound to observe it. They must submit to it on the one side, and we may take advantage of it on the other. If the law requires that certain specified forms shall be complied with, those forms must be observed, whatever may be the consequences. And which, I pray you, would be the deepest reproach to the law, to permit a guilty man to escape by a rigid and honest adherence to one of its own positive and absolute, though technical rules, or to permit courts and jurors to break through its salutary restraints, legislate at their pleasure at the hazard of a man's life, in an isolated case, and enact a new statute, during the progress of a capital trial, in order to insure a conviction as its result?

No; if this be the positive and well-settled rule of the law, and the proofs of the Government do not come up to and fulfil all its demands and requisitions; if the counts in an indictment which are good and sufficient cannot be maintained, the law will not permit them to fall back upon another, which is insufficient and fatally defective. In such a state of things, it would be your great, your imperative duty, which you should discharge not only cheerfully, but gratefully, to acquit the defendant. Guilty, for the sake of the argument, he may be allowed to be. But "better that a hundred guilty men should escape, than that one innocent man should suffer;" and therefore the law throws round the life of every individual its cautious guards and protections. It has its prescribed regulations respecting the introduction and effect of circumstantial evidence; it ordains the form of prosecution, and determines what shall be the allegations and averments in an indictment; it hampers its highest officers with stern, unbending, technical rules; and it demands, that they who are concerned in its administration shall not trample upon or disregard them. And I say to you, without hesitation, that to acquit even a felon, known to be guilty of the most odious and atrocious offence, in conformity to law, because of the intervention in his behalf of some mere, but paramount, technical legal rule, would be a nobler triumph than was ever witnessed in the groans or agonies of convicted guilt upon the scaffold. If you shall receive instructions from the Court, in conformity to the views which we have now taken of the law; and if you cannot find, upon the evidence, that the

"manner of the death" was such as the indictment alleges it to have been, then I ask you, not alone for the prisoner, but for the honor of the law and the justice of your country, to render a verdict in his behalf.

But leaving these and all other questions to be finally disposed of by you, I shall proceed more directly to the consideration of the evidence upon which the Government seek to convict the prisoner at the bar, and by which they claim to have proved that he is the individual by whom the life of the person whose remains were found in the vault, the tea-chest, and the furnace, at the Medical College, was destroyed. And here it is necessary to pause, and bring to our minds the clearest and most distinct perception of the exact position respectively occupied by the parties to this issue, — the precise points both of their difference and of their agreement. Without thoroughly understanding, or without constantly keeping in view, these positions, — the statements and propositions which they respectively admit or deny, — it will be impossible for you rightly to apply the evidence, or to discover, by any exertion of the power of reasoning, the conclusions which are justly to be deduced from it.

I repeat, then, what I have said to you before, that the Government claim that Dr. George Parkman entered the chemical lecture-rooms at the Medical College, between the hours of half-after one and two o'clock, and nearest to the latter hour, on the afternoon of Friday the 23d of November, and then and there had an interview with the prisoner at the bar; that the parties never separated after that meeting, and that Dr. Parkman never left those rooms or departed from the College. On the other hand, the prisoner admits that that interview did take place; but he insists that the time of its occurrence was precisely at half-after one o'clock; and he altogether denies, that it was at the later hour fixed by the Government. And he, moreover, insists that the object of the interview was immediately accomplished, that the parties separated, and Dr. Parkman left his presence and departed from the College. Thus you will perceive, that the meeting and interview between the parties is an agreed and conceded fact; but that the precise time of its occurrence, and the alleged separation, are matters of difference and dispute. It will readily occur to you also, that, if the Government will not accept the admission of the prisoner as to the time, it devolves upon them to show, by satisfactory proof, that the meeting occurred at an hour different from that assigned by him.

I shall soon call your attention, most particularly and carefully, to this question of time, and to all the evidence which has any relation to it; and shall show you how directly and essentially it bears upon that other question of disagreement and dispute, — the alleged separation, — in which is involved the whole issue upon this indictment. Upon that issue, the difference is absolute and total; the Government positively allege, and the prisoner as positively denies, his perpetration of the homicide charged against him. But, when they claim that the remains which were found in the various parts of the Medical College were the remains of the dead body of Dr. Parkman, the prisoner neither assents to nor denies the proposition. He simply replies, that he has no knowledge whatever concerning it. We stand, then, now, in relation to that, where he has stood from the beginning. When, on the morning following his arrest, after passing a night of such agony and wretchedness as almost transcends the utmost measure and strength of human endurance, he had partially recovered from the absolute insensibility to which his misery had subjected him, his first, faint words expressed in simple but expressive language all the defence upon which he now stands before you: — "I do not think those remains are the remains of Dr. Parkman; but how in the world they came there, I am sure I do not know." This statement and defence, you will at once perceive, involves the proposition, that, whoever was the human being whose remains were discovered in and beneath the laboratory of the prisoner, they were deposited there without his agency and without his knowledge, and by means and for purposes of which he is utterly ignorant. He can go no further than this; nor does he now profess to be able to explain what lies altogether beyond the reach of his understanding. He can only say, "I am guiltless of my brother's blood," and deny the sufficiency of all the evidence of the Government to bring home or fix the truth of its grievous accusation upon him.

The most material circumstances, of which the Government have offered evidence, and from which it claims that the guilty agency of the prisoner is to be inferred, are, that Dr. Parkman entered the Medical College on the 23d of November in perfect health, and there had an interview with the prisoner, in the rooms and apartments occupied by him; that he never left the place where it occurred; that the remains of his dead body were discovered there on the 30th of the same month, in situations and under circumstances

clearly indicating a purpose and design of concealment; and that during all the intermediate period of time, from the 23d to the 30th of November, — from the time of the interview to the time of the discovery of the remains, — those rooms and apartments were, solely and exclusively, in the charge and possession of the prisoner.

But there are several other subjects, relative to which evidence has been produced, and which may be regarded as auxiliary proofs, which it will be most convenient to dispose of, before entering upon a consideration of those more material circumstances and considerations. And I shall hope to convince you, that none of them either tend to prove any of the allegations in the indictment, or to give support or aid to any of those circumstances from which the inference of guilt shall be attempted to be drawn; and that it will therefore be your duty to discard them wholly from your minds, as any part of the basis upon which your judgment is finally to rest.

In the first place, in relation to the anonymous letters. Three such letters, received by Marshal Tukey, have been produced and read to you, which are alleged to be in the handwriting of the prisoner. They are introduced for the purpose of showing, that he resorted to these extraordinary means to avert the attention of the police from the Medical College. And it is urged that consciousness of guilt alone could have prompted the writing of them, if they were written by him; because he could have had no other motive than to divert inquiries from the place where the silent evidence of crime was secreted. We may admit that the argument would be strong, if the fact of his authorship were established beyond all reasonable doubt. It would be difficult to assign an adequate reason why, if an innocent man, he should have sent such anonymous communications, in a disguised writing, to the head of the police of the city.

But the fact itself is first to be proved; and that is absolutely denied by the prisoner. I mean to deny it in terms the most decisive and peremptory.

I regret that these letters came so recently as they did into our possession, — so recently that we have had little opportunity to make a critical examination of them in comparison with specimens admitted to be the genuine handwriting of the prisoner, or to go abroad and find witnesses to whom we could submit them for a proper and thorough scrutiny. They were brought in, as you know, at the very close of the Government's evidence. We were then, and have been ever

since, too much pressed with our engagements, the constant urgency of which you can easily appreciate, to devote the time we could have desired to this particular investigation. Yet I think I have seen them enough to enable me to convince you that they were never written by Dr. Webster.

The only evidence that these letters are in his handwriting consists of the opinions of the experts, Mr. Gould, the teacher, and Mr. Smith, the engraver. They have, indeed, often seen his signatures to the medical diplomas of the students at the College; but it is obvious, that their opinions are chiefly to be relied on, only as they may be supposed to be persons possessing peculiar skill and ability in reference to the general subject of handwriting. Mr. Gould believes that all the letters were written by Dr. Webster; but Mr. Smith sustains him only in relation to that, signed "Civis."

Mr. Gould stated the reasons upon which his opinion was formed. He sees certain resemblances in some instances, and exact correspondence and similarity in others, in certain letters and words which are contained in the anonymous letters, upon comparing them with certain specimens of the admitted handwriting of Dr. Webster which he produced. All these papers are now before you. I have had but little time to examine them, and I claim no skill as an expert. And yet I can easily discover that the supposed resemblances and similarity are merely fanciful and imaginary; and I feel sure, that, if you shall take pains to subject all the writings to a careful and critical scrutiny, you will believe that Mr. Gould is too much of a visionary to be relied upon by a jury. This examination you will have all necessary opportunity of making, when you retire for the purpose of deliberation. You are not to be governed or controlled by the opinion of experts. It is but evidence to be considered in connection with the much more important information you can obtain for yourselves, by your own comparison of the papers, which will be put into your possession. I will point out but a single instance; it will serve as a specimen for all the rest. Mr. Gould designates the figures 1, 3, 4, and 9, in the "Civis" letter as corresponding in peculiarity of form and construction with the same figures in the acknowledged specimens of genuine writing. Now, if you will for a moment look at the figure "9" in the letter, and compare it with the same figure in some twenty or thirty of the bank checks, you will find it as different in structure, formation, character, and appearance, as two different writers could easily make it.

Taking the statements of both the witnesses, and all the opinions they have given, no one would pretend to say, that there was any pretence for assuming that Dr. Webster wrote either of these, except the one signed "Civis." And believing, as I do most confidently, that that was not written by him, I have only to commend it to your careful scrutiny in comparison with the genuine writing. I need not dilate upon this subject. The Court will inform you, that the opinion of the experts is only evidence for your consideration, and is really, upon such an issue as you are trying, of the most inconsiderable if not trivial importance. And I cannot entertain a doubt, that the only conclusion that you can arrive at in relation to these anonymous letters will be, that it is your duty to lay them aside, and put them wholly out of the case.

Next, there is the evidence in relation to the tin box and the fish-hooks, which were procured by Dr. Webster. It appears, that he called on the morning of Friday the 30th of November, at the shop of Mr. Waterman, in Boston, and ordered a certain tin box to be made for him, and gave particular directions as to its size. But how does that connect him with the homicide of Dr. Parkman? Will it be argued, that it was procured as a vessel in which to conceal or convey away the remains, which were found in the laboratory? There is no evidence to warrant any such conclusion; but quite the reverse. The remains were at the College in Boston, but the box was to go to the residence of Dr. Webster in Cambridge; at least, such was his direction to the workman who was to make it. Before you can attribute to him the supposed appropriation, you must have ample evidence that such was his purpose. Suppose that the whole proofs were so balanced by opposite considerations, that you could say your reasonable doubts would be satisfied, if you were sure that this box was procured by the prisoner for the purpose of bestowing in it those remains. The Government claim that they can prove that purpose; and, to do so, they call Mr. Waterman and his workman, who testify that Dr. Webster said, when he ordered it, that it was to be made to put small things in, and to be sent out of the city to be filled. It is plain, that the attempt to show that the purpose of appropriation had any relation to the remains at the College has completely failed.

The evidence in reference to the fish-hooks is equally unimportant and futile. Dr. Webster, on Tuesday of the week of his arrest, openly procured at a store in Dock Square

those half-dozen fish-hooks, which were found in the laboratory, — a part of them tied with twine in the fashion of a grapple. And the Government intimate that you may presume, that the grapple was prepared to draw up the limbs from the vault of the privy when Dr. Webster should get ready to make other disposition of them. But, here again I ask, where is the evidence to evince any such purpose or design on his part? It does not exist; and you cannot rashly bring things together, which have no proved relation or connection.

For the box and the fish-hooks, he had a purpose of his own, which he could easily explain, if the Government would receive his explanation, and accept it as true. But neither his declarations here, nor what he said to his wife or children at home, can be offered as competent evidence. The Government will not take his statements; — take you none, then, from them, unless they are fully borne out by evidence. Require them to prove all things, that you may hold fast that which is good. The most that they can pretend to have shown you is the possibility of the application of those articles to the supposed objects; but, until the design and purpose of such application are shown, it would be the grossest injustice to permit them to have any effect against the prisoner.

At one time, another matter seemed likely to occasion us at least some perplexity, if it did not tend also to endanger the safety of the prisoner: the bag of tan carried by Sawin to the College, on Monday the 26th of November. The thorax and thigh of a human body were found imbedded in tan in a tea-chest in his laboratory, during the day following his arrest; and here was the tan brought by the teamster from the Doctor's own house in Cambridge on the preceding Monday. But all the unfavorable conclusions which could be drawn from the circumstance, that a supply of this article was provided on Monday, were readily disposed of by the testimony of officers Eaton and Fuller. They found not only the tan in the tea-chest in which the thorax was imbedded, but saw more of it also in barrels in the same room, while the bag of tan carried over by Sawin remained there, unopened and untouched after the prisoner had been committed. There was nothing peculiar about it: a chemist's laboratory is crowded with every variety and species of article used by manufacturers. They try experiments upon everything. It might have perhaps been thought worth while to attempt to show why the tan was in this instance carried

there by Sawin, did it not abundantly appear from the Government's own evidence, that it had nothing to do with the homicide, the remains, or the issue before you.

We were threatened again, at another time, with danger from the evidence concerning certain filed keys, which were seized by the police from some drawer or shelf in the apartments of Dr. Webster; but happily we have his own sufficient explanation in relation to them. They were casually picked up in a neighboring street, and carelessly thrown by, as of some possible future use. No matter that some of them would fit the locks of his own door, or the door of the dissecting-room; for, though he had a perfect right of access to that room, there is no pretence of proof that he ever used those keys for the purpose of obtaining it. If he were on trial for house or store-breaking, the possession of these burglarious instruments might be significant; being on trial for murder, evidence of possession of deadly weapons would be far more appropriate and material. The keys might touch the case of a burglar; deadly weapons, if they were shown, might be brought to bear against the prisoner. I submit, that there is nothing here which should affect him.

Mr. Littlefield has testified that a sledge-hammer was left in the laboratory by masons who did repairing there more than a year ago; that he afterwards frequently saw it there, and that he saw it on the morning of the 23d of November. Since the arrest of the prisoner, diligent search has been made for it, and it cannot be found. It has evidently been carried away. Other witnesses have testified to the twine which was found tied round the bone of the thigh, which was discovered beneath the tan in the tea-chest; and this piece of twine corresponded in appearance with that of which the fish-hook grapple was made, and with a large ball of the same article, found in the private room of the prisoner. Both these circumstances will be readily accounted for upon either of the hypotheses which are before you. If Dr. Webster committed the homicide and concealed the remains, it would not be improbable that he removed the sledge, and perhaps quite certain that he fastened the twine to the thigh-bone. But, if some unknown agent was there, by whom the body was brought into the College, it would be equally reasonable to impute those effects to him. He who could make the disposition which certainly was made of the different parts of the body, was under no restraint from the locks or bolts by which the several rooms were secured; he could dispose of the hammer and the twine as

it suited his pleasure. Unless, therefore, the evidence of the Government excludes, to a moral certainty, the reasonable probability that some other person beside Dr. Webster mutilated and concealed the body, the circumstances relative to the twine and the hammer become insignificant and worthless.

Mr. Trenholm was called to state the conversation of Dr. Webster with him concerning a twenty-dollar bill, about which he said inquiries were made of him by Marshal Tukey, or by his directions, in the expectation or hope of tracing it to Dr. Parkman. This has been fully explained to you. It appears that an Irishman offered a bill of that amount, at the bridge, to pay a toll of one cent; the bill was retained by the toll-keeper, upon a suspicion, not unnaturally excited, that the money was unlawfully obtained, — and possibly from the person of Dr. Parkman. Inquiries were accordingly made of Dr. Webster, if he could identify it as among the bills which he paid to him; but he was unable to do it; and there, that whole matter ended. It is obviously no longer of any consequence.

Mrs. Coleman has been called to relate the interview which Dr. Webster had with her on Friday the 30th of November, — the day of his arrest. From her testimony it appears, that, on his return from Boston, he called at her house in Cambridgeport to inquire of her when she had seen Dr. Parkman. Such inquiries were, at that time, being everywhere made by all classes of people, and of all sorts of persons. Dr. Webster, as some of the witnesses have mentioned to you, was somewhat peculiarly inclined to interest himself in all subjects which attracted the public attention; and it was therefore perfectly natural that he should do so in this. He had heard that Dr. Parkman had been recently seen in Cambridge by Mrs. Coleman; and, on his way back to his home, he stopped at her house to obtain certain information. Whatever the answer, no harm could come of the inquiry; and it might possibly afford some clue to the discovery of a citizen who was lost. She says, that, in reply to his inquiries, she informed him that it was on Thursday; that he repeated the question, and she gave him again the same answer; and that still further, as he was leaving the house, he asked her once more, if it was not on Friday that she had seen Dr. Parkman. Her testimony indicates, at least, that her reply to this last interrogatory was uttered with a somewhat significant emphasis. All this may be very correctly related by Mrs. Coleman; but, certainly, there is

pretty strong reason to suppose, that Dr. Webster did not understand her, in relation to the time, according to her present narrative; for you will recollect, that the same evening, when he was riding from Cambridge to Boston, under arrest, though he was then wholly unconscious of it, he proposed to the officers to call at Mrs. Coleman's, who had seen Dr. Parkman, as he told them, on Friday. But, be all this as it may, it is not pretended that he sought to induce her to make any representations on the subject, which were not in strict accordance with her recollections. He called upon her for information; and, having obtained it, he confessedly left her, without persuasion or comment. Her whole testimony may be fairly set aside, as immaterial to the issue, or as furnishing no guide or aid to you in any part of your deliberations. I have no doubt that you will regard and treat it with indifference.

There are two matters more, testified of by Mr. Littlefield, which belong to this class of miscellaneous facts, which are crowded in as parts of the auxiliary proofs against the prisoner. I refer to the blood which he desired to have procured for his use from the Hospital, and to his conversation with Mr. Littlefield concerning the dissecting-room vault.

In the first place, as to the blood. Dr. Webster, in the manner in which he usually made calls upon the janitor for services about the laboratory and lecture-rooms, requested him to obtain for his use a small quantity of blood from the Hospital, saying that he wanted to make use of it in the course of the lecture he was that day to deliver to the class. Professor Horsford has informed you, that blood is an article which a chemical teacher might have occasion to use in the course of his instructions. There is not the slightest evidence to show that such was not the object for which Littlefield was requested to procure it. The presumption must be, that such was the purpose; for the law always presumes that men act in conformity to their duty, and make a right use of whatever they are permitted to use at all, until there be something to render it doubtful, or prove it to be otherwise. There is nothing here to excite a suspicion, or even to start the question, whether this blood was collusively called for, or wanted for a most fit and suitable appropriation.

And then as to the dissecting-room vault. There had been some conversation or arrangement, among the professors in the College, respecting its repair, as it had before, on account of the imperfection of its construction, emitted an unpleasant effluvia through the building; and Littlefield

was inquired of, if it had been repaired; and he answered that it had been. Dr. Webster, believing that gas might be generated in it, if the vault had been made tight and secure, and wishing to know the fact, did not put this question in that form to Littlefield, who might not have been able to answer it, but asked him if a light would burn in it; to which Littlefield replied that it would not, for he had let down a light to find something accidentally dropped in by Dr. Ainsworth, and the light was immediately extinguished. Then Dr. Webster said he wanted to take gas from it for an experiment; and, upon being asked how he could do so, replied, simply, that he had means by which it might be effected. The conversation ended there.

It is easy to see the intimation which the Government mean to suggest to you by proof of this conversation. But it is equally easy to repel it. They would have you suppose, that the prisoner, while he was premeditating the atrocious crime he was soon to commit, was looking round for a secure and secret place, for the deposit of the body of the man who was to die under his hands. But you will not adopt this harsh suggestion, which even their own theory — the very charge itself against the prisoner — almost demonstrates to be without foundation. If he had committed the murder, and had learned in advance that this receptacle of the dissected dead was not only dark, but incapable of illumination, it is impossible that he should not have chosen it as the hiding-place of his slaughtered victim. But no bones or body were found there; and I submit to you, if this undoubtedly innocent conversation can, by any misconstruction, be tortured to the prejudice or disadvantage of the prisoner.

I am sorry to have been obliged to detain you so long in discussions concerning subjects undoubtedly of minor importance. Yet they are a part of that immense mass of circumstantial evidence which has been thrown into the scale against the life of the prisoner at the bar. I could not do less than attempt to repel, subdue, and overcome, the injurious force and influence of them all. I trust that this has been done, and done effectually; and so effectually, that, in your ultimate deliberations, every one of them, and every consequence to be deduced from them all, whether severally or collectively, will be summarily dismissed altogether from your minds. Their disposal opens the way to the consideration of matters of deeper moment and more solemn interest.

The Government charge Professor Webster with the wilful murder of George Parkman, and endeavor to establish the

truth of their accusation by the evidence which they have adduced to prove, and which they claim is sufficient to prove, the two propositions: — first, that these parties never separated alive, after their interview in the Medical College, on Friday the 23d of November; and, secondly, that from the time of that interview until the succeeding Friday, when the remains were discovered in the vault of the privy, Professor Webster was in the sole and exclusive possession of the chemical lecture-room and apartments of the College appropriated to his department, and kept them constantly secured from all outward access, by fastening the doors with bolts and locks; and therefore that he only having the means of entrance thereto, must have been the person by whom the several parts of the body were deposited in the different places where they were found. To these propositions, the prisoner opposes all the evidence tending to show that Dr. Parkman did leave the College, after that interview; and he furthermore insists, that those apartments were not kept so fastened and secured as to exclude the entrance of other persons; but that they must have been, and were in fact, secretly invaded by some unknown individual or individuals, who carried into them the body of the deceased, and did all that was subsequently discovered to have been done there concerning it. And he contends, that, although he is unable distinctly to prove the truth of this last proposition, there are circumstances disclosed in the evidence quite sufficient to render it worthy of being received as a probable and reasonable hypothesis.

The application of the evidence before you to these opposite and conflicting hypotheses can be made only by diligence, assiduity, and care. I have already, in the early part of my argument, endeavored to impress upon your minds the controlling importance and effect of those direct proofs by which we have endeavored to establish the *alibi* of Dr. Parkman. I shall now, by the most precise and careful analysis and comparison which I am able to make of the further evidence in the case bearing upon the question of the separation of the parties, endeavor to satisfy you, that Dr. Parkman did leave the College after their interview was over, and that this fact of separation clearly and unequivocally results from the evidence of the Government itself.

You will readily perceive, that this inquiry is a matter of the greatest importance, because, while it has the strongest possible tendency, in its direct and immediate consequences, to relieve the prisoner from the suspicions which unexplained

appearances may have excited against him, and to remove from him all imputation of crime, it furnishes also no inconsiderable ground of support for that theory which supposes the intervention of an unknown stranger in all the processes of mutilation, destruction, and concealment of the human body, which was found in his apartments.

And here, you will observe, is a most appropriate occasion for the application of those legal rules concerning circumstantial evidence, which were so clearly and admirably unfolded and explained to you by my associate, in opening the defence. The Government must not only fully prove the facts which they make the basis of their subsequent conclusions, but these conclusions must be such as will both support their own, and exclude, to a moral certainty, every other reasonable hypothesis. If, therefore, the suggestion of the intervention of an unknown person, by whom all the appearances in the apartments of Professor Webster, which have been described to you, might have been produced, be not an unreasonable hypothesis, however intense the suspicion which the evidence of the Government would otherwise have created, or whatever bias of mind it might occasion, an absolute conclusion of guilt cannot be drawn, nor will the law allow that the fact is proved beyond all reasonable doubt.

It comes to be of the utmost importance to ascertain the exact time of the interview of the parties at the College. Professor Webster says, that it was at half-after one o'clock; he admits its occurrence at no later moment.

The witnesses for the Government, Mrs. Moore, her son George Moore, Dwight Prouty, Jr., Elias Fuller, and Albert Fuller, clearly prove that the time when they saw Dr. Parkman going towards Grove street and the Medical College, must have been as late as ten minutes before two o'clock. Littlefield, who saw him approaching, says it could not have been earlier than a quarter to two. This was very nearly twenty minutes after the time when Dr. Webster says the interview was over, and Dr. Parkman had left the College. If half-after one o'clock was truly the hour or moment of the interview, the fact of the separation of the parties is conclusively demonstrated by the very proofs of the Government itself. For then the testimony of Moore, Fuller, Littlefield, and the others, will apply to a second occasion on that day when Dr. Parkman was approaching the College; — when he approached, but did not enter the building. For, you will here observe, — and it is worthy of your most particular attention, — that none of these witnesses saw him enter the

building, though he had undoubtedly entered it, as I shall soon plainly show you, a very short time before.

What, then, was the hour of appointment, and of the actual meeting of the parties? You have it from every source of written and verbal statements to which the Government have resorted, and of which they have furnished you with evidence, that Dr. Webster invariably fixed it at half-after one o'clock. Since they have thus proved his declarations, they ought to be bound by them, until they produce something to controvert the truth of his statements. But your knowledge of the exact time does not depend alone on those declarations. They are abundantly corroborated and sustained by independent testimony, and the most significant collateral circumstances. Patrick McGowan, the servant of Dr. Parkman, was present, at least part of the time, when Dr. Webster was at his house, and made the appointment. He did not hear all the conversation, but he heard enough to enable you to fix the time with all reasonable confidence and certainty. He heard them speak of *half-after one o'clock*, which, from the very design and purpose of the conversation, could have referred only to the appointed time of their meeting. And this appointment, you must feel assured, was most punctiliously kept by Dr. Parkman. He was, upon the testimony of all his friends, upon all occasions the most punctual of men; and he had special and urgent motives and inducements to be particularly so in the present instance. He was pursuing an object in which he was deeply interested, with an earnestness and vigor which knew no intermission, and which would allow interruption by no careless or negligent delay. Having by special appointment agreed to meet Dr. Webster at a particular hour, upon his promise then to make payment of the money, he would never have allowed him the opportunity of saying, "You were not there at the time," as an apology for postponing or evading the payment. You may be sure, that the persevering creditor, so habitually punctual, was not then a moment behind the time.

And it must have been at this hour of half-after one, that Dr. Bosworth saw Dr. Parkman enter the College. A comparison of the circumstances stated by him in his testimony with that of Mr. Littlefield, very manifestly and conclusively shows, that the two witnesses saw Dr. Parkman on two different occasions,—the one at a short interval of time from the other. Littlefield did not see him enter the building, but saw him at a distance of only three or four rods from it, walking very fast towards it. The front door, before which

he stood, was then *wide open*. He evidently saw no person upon the steps, and makes no mention whatever of Dr. Bosworth. Now, Dr. Bosworth, — the last witness, you will recollect, who was called by the Government, — testifies that he saw Dr. Parkman go up the steps to enter the College. He leaves the time somewhat indefinite, but thinks it was nearer two than one o'clock. He dined, he says, in Cottage Place, at half-after twelve, — ate his dinner as soon as he could, and went direct to the College; which would have enabled him easily to arrive there by half-after one. He went up the easterly flight of steps; stopped in front of the front door, which was not then *wide open*, but "*stood ajar*," that is, *partly* open; stopped there a moment, looked into the entry, and saw no person there, and then descended on the westerly side, and met Dr. Parkman at the foot of the steps as he turned the corner; and afterwards saw him when he had arrived nearly at the top of them.

It is perfectly plain, upon the testimony of these two witnesses, that Dr. Parkman was seen by them on two separate and distinct occasions. The facts and circumstances stated by them are utterly inconsistent with the supposition that they both saw him at the same time, or on one and the same occasion. And upon this testimony of Dr. Bosworth, in connection with the statements of Dr. Webster as to the appointed time of the meeting, confirmed as it is by the testimony of Patrick McGowan, who can fail to be convinced, that Dr. Parkman was at the College precisely at half-after one o'clock? That he rapidly transacted the business which called him there, and immediately departed? This will satisfy and reconcile all the other evidence in the case upon this subject. Fifteen minutes later, — that is, at fifteen minutes before two o'clock, — he was seen by Mrs. Hatch, in Cambridge street. Five minutes afterwards, he had wandered back to the neighborhood of the College, and was seen by Littlefield, Fuller, and others; but no one saw him then enter the building or ascending the steps. The next that is known of him, he was met by Mr. Thompson in Causeway street, at fifteen or twenty minutes after two o'clock.

I do not see how it is possible to avoid this conclusion. Half-after one o'clock was the time talked of in the presence of McGowan at the house of Dr. Parkman in the morning when the appointment was made; it is the time uniformly declared by Dr. Webster. He had no possible motive to state it erroneously. If you knew him to be innocent of the homicide, you would not hesitate to believe him in this par-

ticular statement; if he were guilty, do you not perceive that he would be even more cautiously accurate where it was so easy to be correct, and so dangerous to expose himself to the hazards of contradiction? But in fact he is fully confirmed, not only by McGowan, but by Dr. Bosworth, whose testimony effectually distinguishes the time when Dr. Parkman ascended the College steps from the occasion when he was seen in Grove street by Littlefield and the Fullers. These considerations are decisive of the time; or at least, in the disposal of a momentous accusation supported only by probabilities deduced from collateral circumstances, they ought to be held sufficient to satisfy the mind of every rational man, that Dr. Parkman went to the College at half-after one o'clock, completed his business there, and departed from it before he was seen, at ten minutes before two, by Littlefield, Fuller, and others, as he was passing through Grove street towards it.

This conclusion is not only perfectly compatible with all the other evidence, but affords a satisfactory explanation of circumstances which otherwise it would be difficult to account for. Mr. Holland says, that Dr. Parkman came into his store, at the corner of Vine and Blossom streets, about half-after one o'clock. Mr. Moore, who was there, thinks it was a little later; and probably he is correct. Both of them say, that he remained there some ten or fifteen minutes, arranging for some inconsiderable purchases of butter and sugar. Now, it is quite inconceivable, if he had not already seen Dr. Webster, that he should have been lingering in that shop for such trifling purposes. It is not reconcilable with his motives or purposes, or former conduct, that he should have done so. He who had before been in such earnest pursuit of his debtor, who had watched with untiring vigilance the highways and by-ways to track his course, who was heated with such feelings as he had exhibited to Mr. Pettee, would not have loitered in a grocery in petty purchases of a few pounds of butter and sugar, when on his way to fulfil an appointment which was to consummate a purpose he had so vigorously followed up, and upon the accomplishment of which he had so earnestly resolved. But, on the other hand, if the interview were over, there would be nothing in it unnatural or improbable. The time is just what might be expected. The interview with Dr. Webster at the College, being terminated almost immediately after half-after one, would bring him to the store of Holland very nearly, if not exactly, at the time testified of by him and Moore. This again would correspond with the statement of Mrs. Hatch, who saw him in Cambridge

street at fifteen minutes before two, from whence he could easily have returned to be seen in Grove street near the College by Littlefield, the Fullers, and other witnesses, at ten minutes before two, — the time mentioned by them.

It is thus that all the testimony can be reconciled, and consistently explained; leading on, by a natural and not distant connection, to the evidence of those witnesses who saw Dr. Parkman at later hours during the afternoon, and rendering it quite certain that they might, and highly probable that they did, meet with him in the various localities they have particularly described. While I forbear from all repetition of that evidence, I cannot but recall its vital importance to your attention, and ask you to consider how it is sustained, confirmed, and strengthened by the considerations I am now submitting to you.

But, beyond the information which this evidence discloses, it must be conceded, that there is a darkness which cannot be penetrated, and mysteries which cannot be explained. There are but few and faint traces of Dr. Parkman, after he left the Medical College; and then all are lost. We possess no information by which his footsteps can be followed to the scenes, whatever they were, upon which he entered. He returned no more to his family; but whether, if he is no longer among the living, he sunk under the common infirmities of humanity, or fell by the hand of the assassin, we are without the necessary means of certain determination. But it is not, as I have said to you in an earlier part of my remarks, either unjust or uncharitable or unreasonable to assume the probability of the conjecture of his most intimate friends, immediately after his disappearance, that he had been overcome by a sudden aberration of mind, and had wandered away into places unknown, or had fallen into the hands of wicked men, who had robbed him of his property, and deprived him of his life.

From this time forward, until the mutilated remains of a human body were found in the Medical College, there are no tidings, either of his existence or his death. Let us see if in this interval we can find in the evidence any traces of an active but unknown agent in these melancholy premises, other than the prisoner at the bar, to whom, upon a reasonable hypothesis, may be attributed the work of darkness and desolation which was accomplished there. Dr. Webster denies all participation in it and all knowledge of it. He left Boston at an early hour in the afternoon, and returned to his family at Cambridge. A medical student, Mr. Preston,

testifies that he saw him at the College at six o'clock in the evening. But he is manifestly mistaken. Dr. Webster was at Kidder's, where he purchased a box of cologne at five; and you have the undisputed testimony of his daughters, that he was with his family at tea, and remained at home until he went to Mr. Treadwell's. His daughters went to a party, and returned after twelve o'clock, finding their father and mother sitting up for them; and the family soon after retired to rest. During that same night, there was a strange and extraordinary movement within the Medical College. As late as half-after nine or ten o'clock, Mr. Littlefield fastened up the building, and bolted with an inside bolt the outside-door of the dissecting-room entry. No lights were burning, and no person was known to be in the apartments there. Dr. Webster was then certainly with his family in Cambridge. Very early the next morning, that dissecting-room entry door was found unbolted, and unbolted on the inside. Some human agent had been there. Who was he? The question cannot be answered; but the fact remains, that some one was there. Who he was, or how he obtained an entrance, or for what purpose he invaded those premises during the midnight darkness, there is no voice to tell and no witness to explain. But, if this inexplicable and mysterious presence cannot be fully accounted for, it must suggest the most important considerations for your reflections. It is the first secret movement which is known to have occurred in that place after the disappearance of Dr. Parkman, and betrays the operations of a human agency there at a time when Dr. Webster was certainly absent. It is the beginning of the development of the hypothesis upon which we rely, and of which still further traces will be subsequently discovered.

Nothing further is known to have transpired at the College until the following Monday; on which day, and again on Tuesday, the apartments of Dr. Webster were visited by the police; and, although no thorough search was made, nothing of a suspicious character was seen or discovered. On Wednesday Dr. Webster was at the College, but returned at an early hour to Cambridge, and did not again go to his rooms at the College until Friday. You know that during that interval those rooms were accessible without the use of keys for the doors; for Mr. Littlefield has described to you the free entrance he found through an unfastened window on Wednesday, when he himself entered, and made examination of the premises. Within that period, had anything occurred, had any changes been made, which indicated that those apartments

had been visited by any individual? Mr. Kingsley, who was there with the police on Tuesday, noticed the tea-chest containing the tan. There were then a few minerals upon it, but not so many as to conceal the tan from observation; but, when that chest was afterwards found by the police, the minerals had been accumulated upon it, so that the tan was entirely concealed. This change, slight as it is, could not have been made but by some human agent. You will ask in vain for an answer to the inquiry, who he was. And in this same tea-chest, when it was found by the police to contain the thorax and the thigh of a human body, was found also the pruning-knife of Dr. Webster with no mark or spot of blood upon it, but clean as when it came from the shelf of the tradesman who sold it. Do you suppose that Dr. Webster placed it there? Why should he have done so? He made no secret of its possession, and he had no reason to do so; he exposed it as freely as he had for years exposed the silver-cased yataghan. Another agent might have had a motive, — to cast off possible suspicions from himself, or to prepare the way for a future accusation; but it is impossible to suppose a reason or a motive which could have induced Dr. Webster to hide that knife there. — There is another circumstance, still more expressive and significant: the twine that was tied round the bone of the thigh, which was crowded into the thorax and imbedded in the tan of the tea-chest. That twine, no doubt, came from the ball of Dr. Webster. Wherefore was it fastened to that bone? Can you conceive that he should have done it? It was not used for compressing the thorax to a diminished size, — it was tied on for no assignable purpose that you can attribute to him. No twine was found upon any other part of the limbs or body. There is but one cause which you can assign for this small, but significant fact. Whoever fastened that twine to that bone meant it should be an indication which should point to Dr. Webster; and, if there was such a purpose, there was a secret agent in that apartment by whose instrumentality it was effected.

Perhaps, also, the fire which was detected in the assay-furnace by Mr. Littlefield on Wednesday affords a similar indication. On Tuesday, when the laboratory was visited by the police, Kingsley saw a bright fire burning in it; but there is no pretence that there were then flesh or bones in it in the process of consumption. On Wednesday, Dr. Webster returned early to Cambridge; it was late in the afternoon when Littlefield discovered the great heat on the outer wall.

If there was a secret agent clandestinely visiting these apartments, he was one who watched the movements of Professor Webster; and he who contrived to deposit portions of the remains in the vault of the privy, might have conceived and executed the plan of consuming another portion of them in the fire which was left in the furnace.

These circumstances are all full of difficulties, which admit of no explanation with the limited means of knowledge that we possess; but they deserve none the less your anxious and careful consideration. They point far away to crimes and agencies with which the prisoner at the bar can have had no possible connection.

There is still another fact, which seems utterly irreconcilable with the supposition that Dr. Webster destroyed the life of Dr. Parkman, and disposed of his remains within the walls of the College. The remains which have been discovered are those alone of the naked dead body of a human being. Where are the remnants or the traces of the garments which he wore? So exact and accurate were the professional examinations of the cinders and ashes taken from the furnace, that the material of which every part was composed has been ascertained and verified. So minute was it, that even a very small quantity of tea-chest lead was detected and identified. But where is the manifestation of the presence of any part of human apparel? Yet we all bear about us something that is incombustible, — the buckles of our suspenders, the buttons upon our garments, the nails in our shoes. But not a remnant or a specimen of them all has been discovered.

Now, if it be true, that, of all that has been found in every part of the Medical College, there is not the slightest remnant or trace of anything but of a naked dead body, — if there is nothing that can indicate the presence of any garment with which it was clothed, — if the sudden aberration of mind of Dr. Parkman is not an unreasonable assumption, — if there are manifest though inexplicable indications that an unknown agent clandestinely visited the apartments assigned to the professor of chemistry, I submit to you if it be any extravagant or visionary theory which suggests to you, that he wandered away, he knew not where; that he sunk under some of those sudden visitations which terminate human life, or fell into the violent hands of bold bad men, who deprived him of it; and that, when all was over, his property was plundered, and his naked dead body conveyed within the walls of the College, and secretly concealed where its parts were found. You are the judges; and, upon all these facts and circum-

stances and probabilities, your judgment is seriously and solemnly to be passed. They cannot be disguised from your observation; they cannot be discarded from your reflections. And if they constitute the basis of a reasonable hypothesis, — and if the circumstantial evidence of the prosecution does not, to a moral certainty, exclude you from its adoption, then though it may not wholly satisfy your minds, — though it may not entirely relieve the prisoner at the bar from the painful suspicions which untoward circumstances have excited, it will still be sufficient to create a reasonable doubt, and, under the laws of the land, at least secure him from a verdict of conviction.

I must now ask your attention to a portion of the evidence of the Government which has been thought, and rightly thought, to be not of conclusive, but of serious and material importance. I allude to the testimony of Ephraim Littlefield. I regret that my duty compels me to enter upon an investigation of the credibility of this witness, and of the consequences which are to be deduced from his testimony, because I am not insensible that the tendency of such an examination is even more than to point a suspicion towards him as the perpetrator of that crime which is charged against the prisoner at the bar. But you must not misunderstand me. I do not assume to impute any homicide to him. I will take upon myself no such fearful responsibility in upholding the defence which now rests upon me as that. I leave that responsibility with the officers of the Government to whom it belongs. But it is my duty to examine, and it is yours to weigh, the testimony of this witness; and if there be anything which tends to disparage it, — anything which is sufficient to crush it, you are bound to give the uttermost effect to those considerations, whatever may be the consequences.

The importance to the Government of the testimony of Mr. Littlefield, I do not misapprehend or deny; nor do I fail to appreciate the difficulties it imposes upon the defence. Its general tendency is to show, that Dr. Webster had the sole and exclusive possession of the apartments occupied by him in the Medical College; that he effectually secured them against the access of all persons from without; that his agency in everything pertaining to the remains discovered within and beneath the laboratory was direct and constant; and thereby to diminish the probability and reasonableness of that hypothesis of the defence which suggests the intervention of an unknown agent to whom everything in relation to those remains may be attributed.

You are to consider and determine what weight shall be given to the testimony of Mr. Littlefield, and what abatement shall be made from it. He is in some unimportant particulars corroborated by others. Mr. Sawin, the express-man from Cambridge, testifies that previous to the 26th of November, though he had often carried things from Cambridge to Boston for Dr. Webster, he never found the rooms so fastened that he could not enter them. Upon that occasion, he says that Dr. Webster told him to leave the articles he carried, in the entry, and that he would take them in. When he carried them there, however, he tried the door of the laboratory, and found it locked; and that he looked for the key, which was usually kept in the kitchen of Mr. Littlefield, but it was not there. This, however, cannot be very important; for it is not improbable that Mr. Littlefield himself had the key at that time. Mrs. Littlefield also confirms her husband in a few instances on different days on which she found the door, through which she had usually before that time entered the laboratory, for the purpose of obtaining water, barred against her entrance.

These circumstances of corroboration are, however, of too little consequence to deserve much attention, and cannot in any way essentially affect the testimony of Mr. Littlefield. It is to be estimated upon much higher and more comprehensive considerations. Though consisting of a vast variety of statements in detail, its influence perhaps is chiefly felt in its general character and tendency; its tendency is to show, that, immediately upon his interview with Dr. Parkman, the whole conduct of Dr. Webster was so entirely changed, both in regard to the manner in which the doors of his apartments were kept constantly locked and fastened, and the objects upon which he was himself employed while within them, as to afford the most manifest indications of his guilty connection with the human remains which were afterwards found there. When such is the general purport and tenor of the testimony of a witness, it is of the highest moment to determine if it is worthy of confidence; for, if it cannot be received but with hesitation and distrust, neither human life nor human liberty should be dependent upon any deduction to be drawn from it.

We do not attempt to impeach the general character of Mr. Littlefield for truth and veracity. Nor do we place much reliance upon discrepancies and contradictions. Some mistakes he has certainly made; some errors he has fallen into; and some differences between him and others would be discovered upon a comparison of their respective statements. But upon these matters, I am not disposed to dwell; though

I must say, that we should always be extremely careful not to place too much dependence upon witnesses who are seen to have fallen into errors, even though the errors be not of serious magnitude. A wide berth should not be given to those upon whose oaths depends the fragile thread of human life.

It is not therefore on the ground of his misrecollection and misstatement of several circumstances which he subsequently corrected, but upon the essential characteristics and peculiarities of his testimony, that I appeal to you in reference to the degree of credibility which you should accord to him; and I shall ask you if there be not intrinsic difficulties and palpable manifestations in his own statements, which will make you question his reliability and refuse him your confidence.

Consider the testimony which is before you. Consider especially that portion of it which relates to his suspicions and watchful observation of Dr. Webster, and to his proceedings in the discovery of portions of a human body in the vault beneath the laboratory, and you will not want material from which to judge of the credibility to which he is entitled.

In entering upon that investigation, it will be most convenient to commence at some point from which observation of the whole testimony may be most effectually made. That point is Sunday evening, when he had his first interview and conversation with Dr. Webster relative to the disappearance of Dr. Parkman. He says that he was inquired of where he last saw him, and that he answered, on Friday last, at half-after one o'clock; that Dr. Webster thereupon said, "That is the very time when I paid him, in the College, the sum of four hundred and eighty-three dollars." He adds, that his appearance was at that time so peculiar and unusual, — looking upon the ground, instead of holding up his head and looking in his face, as he before used to do, — so pale, confused, and agitated, — that suspicions immediately came into his mind that he had murdered Dr. Parkman. What a strange and remarkable result! Up to that moment there had been a kindly relation between them; as kind as now exists between any of you and your associates upon this panel. Littlefield held a subordinate, but to him important, place in the College in which Dr. Webster had been for many years a professor, sustaining in his responsible office an unspotted reputation, — gentle, humane, and peaceable; yet this brief conversation, marked at the most with but slight peculiarities, forced, if you will believe him, the clear, settled, and undoubting conviction upon the mind of Mr. Littlefield, that the hitherto respected man with whom he was conversing was a delib-

erate murderer! The vision even of a police officer was capable of no such promptitude of discovery as that. Even Fuller, who noticed, according to his own account, much more agitation and peculiarity in Dr. Webster in a long conversation with him the same Sunday evening at his house at Cambridge, was startled into no conception or imagination of his guilt. But so clear and assured was Mr. Littlefield in his convictions, that he immediately avowed them to his wife. Her exclamation, "For mercy's sake, don't say or think of such a thing," sufficiently evinces how little confidence she had in the apparently groundless reasons for the ill-timed suspicions of her husband.

It cannot but be regarded as most remarkable, that such a conversation should have produced the effects which ensued. If it had sunk deep into the mind of Littlefield, it would have exerted an influence over him from which he could not have recovered; — an influence which would have made his watchfulness of all the movements of the prisoner incessant and unvarying. He tells you that his suspicions of his guilt were from that moment strong and overwhelming, settling down into a thorough and complete conviction. But if you will mark now the conduct of this witness, and see how it conforms to a state of mind so decided in its convictions that he was only momentarily silenced by the exhortations of his wife, you will find that his vigilance anticipated his suspicions, while they were followed by an unaccountable apathy and indifference.

On the preceding Friday, he tried all the doors of the rooms of Dr. Webster again and again, and found them all fastened; he wanted, as he testifies, to enter and make preparation for the fires. In the evening he attended a party with his friends, and returned home late. But, late as it was, he revisits these apartments, and tries every one of the doors. Surely not then, in his party dress, to go in there to prepare for fires for which, as there were to be no lectures, he knew there could be no occasion on the following day. Yet he can assign no better cause for an examination which was then as uncalled-for as it is now unaccountable. The trial at the doors was repeated on Sunday, but for a purpose wholly unexplained, as he does not pretend that preparation for the fires was then his motive. Up to this point of time, though he had no suspicions and no cause to move him at all, his vigilance was incessant; but on the following day, after his conversation with Dr. Webster the preceding evening had not only excited suspicions, but had settled down into an unchangeable con-

viction, he droops at once into the coldest apathy. Opportunities the most ample are afforded to scrutinize these apartments after he came to the overwhelming conclusion that the professor, his friend, a teacher in the College, had in that very place been guilty of the most awful crime that can be committed against humanity; and yet he neglects to take any advantage of them. Three times he was alone in that laboratory, and once also with the police; but in each instance he foregoes all search. When Dr. Samuel Parkman was conducted on Monday morning to Dr. Webster by Mrs. Littlefield, he soon followed, passing through the laboratory and up the stairs into the private back room, where he found them in conversation. Not waiting to listen to it, he immediately returned, the same way he had entered, and left those rooms without having stopped an instant to see if he could discover anything there which should either confirm or dissipate his suspicions. This was the first time he had been in the laboratory after he professes to have believed that Dr. Webster had inflicted some mortal injury in that place upon the person of Dr. Parkman. If such were thus truly his convictions, — if his whole statement upon this subject is not a gross misrepresentation, could he have been so careless and indifferent as utterly to have neglected this early and favorable opportunity to look around, and satisfy himself if any traces of violence or indications of its occurrence were to be found there? Would not his eye have fallen upon every object in natural and instinctive search of some token of guilt? Would his vision have been closed when he was in the midst of scenes where, if at all, must have been perpetrated that terrible crime of which his mind was filled with grievous and irrepressible suspicions? But, though he knew that Dr. Webster was then detained in conversation, and would not therefore interrupt any examination he might make, he returned to his own apartments in listless inattention, as if nothing had occurred to excite his apprehensions! He who had been so vigilant before in watching the bolted doors, now that they are open, and all is exposed to his inspection, does not pause to make a single observation!

During the same morning, Mr. Parkman Blake came there; and, to gain admission for him, Littlefield passes once more alone through the laboratory, but took no advantage of this second entrance to make himself acquainted with the condition of things within it. At a still later hour during the same forenoon, Mr. Kingsley, the agent, and Mr. Starkweather, the police-officer, called there to make search in the College

for Dr. Parkman; and they applied to Littlefield to assist them in gaining admission. It was many hours before this, as he tells you, that his mind was filled with the ineradicable conviction that Dr. Webster was guilty of murder. If such was indeed the state of his mind, how would he now have acted or been disposed to act when accompanied by officers of the police, armed with the authority of law, and charged with the duty of investigation? Would he not have seized eagerly upon that opportunity for the most thorough search? Would he not have watched every indication? Would not his suspicions have induced him to point the attention of the police to every source and quarter of inquiry? Yet he owns to you that both he and they made but a mere formal passage through the apartments, and that nothing like a search was either attempted or proposed.

You may follow him still further in his progress, but it will be with the same result. Before his suspicions were excited, he was full of watchfulness; — when his convictions were most firm, he subsided into indifference.

Tuesday came round, and a still larger force of the police came to the College. None of his former convictions were eradicated from his mind, nor were they in any degree diminished or weakened. He accompanied the officers, and heard Mr. Clapp say to Dr. Webster, "We do not suspect you at all; but we are ordered to search all this part of the city; and the neighbors may object to a search upon their premises, unless one is first made here." Yet, hearing this strong exculpatory apology of the police, Littlefield, who professes to have believed in his heart that Dr. Webster was a murderer, would not even suggest a hint to the officers that it might be worth while to be a little more vigilant! And when the party had got into the laboratory, and when that significant inquiry, mentioned by some of the witnesses, was made about the privy, and Dr. Webster so adroitly withdrew their attention from it, even then Mr. Littlefield could not be roused to the suggestion of the expediency of a more exact examination. Nay; he was the least observant of all who were present. Kingsley made discovery of the spots of nitrate of copper on the stairs, and of the fire in the assay-furnace; but so careless was his observation, that they wholly escaped the notice of Littlefield.

In the nature of things, can it be that such weighty suspicions should have rested upon his mind, — suspicions which could not but have prompted to the most anxious and vigilant observation, — and that he should not only have failed to

notice these new and most obvious stains upon the steps, or the fire in that furnace, where he had never known one to have been burning before, but have also foreborne the most distant intimation to these officers of the propriety of a more careful inspection of the premises?

In singular connection with the profession of these oppressive suspicions, and the careless indifference with which they were accompanied, consider the friendly intercourse between the parties in the afternoon of that same day. Littlefield answered the call of the bell of Dr. Webster, and found him in his private apartment. A few words of kindness passed between them, and Dr. Webster gave him an order for a turkey, as a present, for his Thanksgiving-dinner. It was accepted, and with thanks. I confess I can hardly conceive how he touched that order, much less how he could immediately, as he did, avail himself of its benefit, if he believed that he was taking it from the red right hand of a bloody murderer. I cannot imagine the sensations with which he sat down to the repast it supplied on a day when he was to offer grateful thanksgivings to Providence for its sustaining protection and all its innumerable mercies. Yet this present was most readily accepted; and then, — such kindness softening the heart of one, and such suspicions rankling in the mind of the other, — these two men walked together from the College in friendly conversation. They parted in apparent personal good will, when they reached Cambridge street; — the one to enjoy the grateful intercourse of family associations, — the other to whisper dark intimations of guilt against him by whom he had been treated as a friend and a benefactor. I do not speak without proof; for Mr. Littlefield himself tells you, that, on that same evening when he was returning from the lodge, he stopped at Dr. Hanaford's and spent an hour with him, and during that time apprised him of his suspicions of the criminality of Dr. Webster. Can such conduct be explained consistently with the opinions he professed to entertain, or will the irreconcilable contradictions between his actions and his declarations allow you to accept his testimony as solid, substantial truth?

Go to the next day, Wednesday. He is seen watching the movements of Dr. Webster in the laboratory. All, however, that he discovers is an apparent preparation for a fire in the assay-furnace; and he very soon discontinued his observations. He went to another part of the city, and did not return until afternoon. It was about three or four o'clock that he ascertained in a strange way that there had been a fire in the

furnace. He says, that, as he was passing through the dissecting-room entry, the heat from the wall was so great that he felt it upon his face. It seems to me scarcely possible that a fire in that furnace should have produced such an effect. You have been there, and have seen the position and arrangement of the furnace in reference to the heavy brick wall which separates it from the entry, and can judge whether the statement of Littlefield can be true. It deserves certainly a careful consideration. But he felt, he says, the heat from the brick wall, and he thought, therefore, that the building was on fire! To ascertain this fact, and with no purpose of searching for evidence of guilt or of homicide, after attempting an entrance at all the doors, he got into the laboratory without difficulty through an unfastened window. He goes to the furnace and finds but a trifling amount of fire, and he discovers no evidence that the building is in danger of conflagration. But he is now within these sealed premises, — the scene where must have occurred the perpetration of the crime of which his mind was filled with such strong and abiding suspicions. He has now full possession, and may make the most thorough investigation without fear of interruption. He commences his search; he goes to the open hogsheads of water, but finds nothing in them. But though he had never known a fire to have been built in the assay-furnace before, and now knew that there must have been one there of extraordinary intensity, he would not even take off a mineral or crucible to see what was burning within it. Though he had noticed how Dr. Webster had diverted the attention of the police on Tuesday from the privy, and regarded it therefore especially as a place of suspicion, he made no manner of attempt to open the door, or to see what might be concealed there. Such wasting of opportunities but little accords with the affected magnitude of his apprehensions.

The next day, Thursday, his conduct changes. His suspicions, which before had been accompanied only by inertness, are now rapidly unfolding in action. He had before communicated them to the man in his employment; he now applies to Mrs. Harlow for an axe to commence his operations. He determines upon the work he will do; he will descend beneath the basement, and break through the partition-wall at a point opposite the privy in the laboratory of Dr. Webster. But why should he go there? It was the privy from which Dr. Webster had excluded him and the police; and how should he suppose that all his painstaking in breaking through the wall below would be the necessary end of all examina-

tion? The body might, after all, have been securely secreted in the apartment above. Why not, instead of this laborious breach of the wall, seek the means of entrance to the privy through the door above? If the body was not found there, the light of a lantern dropped down through the hole would disclose all the revelations that could be made from the vault beneath. But no; that process was too simple, or the workman knew too well the point that was to be reached. He therefore proceeds to the breach in the wall upon which he had determined; but the hatchet — instead of the axe which he had obtained from Mrs. Harlow — does not enable him to work effectually.

It may seem to you a matter of some surprise, — worth at least a word of passing observation, — why Littlefield should have commenced his operations at that particular period of time. It happened at any rate to be coincident with the time when, according to his own statements, he first had knowledge of the last reward offered by the friends of Dr. Parkman for the recovery of his body. Whether there was in reality an inducement in that offer to commence the work which was then commenced, you must determine for yourselves. Littlefield denies it. He denies that he has even asked for the reward, and he disclaims unconditionally all future purpose of demanding it. Why he should so disclaim it, if he has been honest in his search, and if his testimony is true, I can conceive no earthly reason. The parties are most amply able to pay; his services have been substantial and meritorious, and his exertions have subjected him to some obloquy, if not to some suspicion and danger.

But, passing from a consideration of the motive, observe now the progress and the interruption of the work. Commenced in the strongest conviction that it would end in the discovery of the evidence of crime, it was soon forsaken; left unfinished and incomplete. Persuaded that he was upon the very track of the murderer, and that he should find in the vault of that privy the body of Dr. Parkman, — which might at any moment be removed to some other place of concealment, — he delays the completion of this most important service merely for the want of tools! He withdrew from the scene of these extraordinary labors to join in the amusements of the festival of the season; and, after actually dancing eighteen out of the twenty cotillons that occupied the night, returned to sleep quietly in his bed, in an apartment beneath which, he professes to have believed, were lying the bones of a murdered human being, placed there, if his sus-

picions were well founded, by the hands of as wicked a criminal as has lived since the time of Cain!

On Friday, he neither rose nor commenced his work at an early hour. While he was at breakfast at nine o'clock, Dr. Webster came into his room, and spoke to him in the same easy and unaffected manner in which he had spoken to him and to others relative to the disappearance of Dr. Parkman. He inquired if there were any news of him, and then mentioned the singular story he had just heard, at Dr. Henchman's, of the mesmeriser, the cab, and the blood. — Dr. Henchman has been a witness for the Government, and might have been asked if such a story had been told at his shop; but no such inquiry was made, and you may therefore unhesitatingly believe that it was. — Mr. Littlefield replied, that there were so many flying stories in circulation that he did not know what to think. Such was the simple conversation between these parties, when the foundation of the College-wall was half undermined, and while Littlefield was meditating the completion of the breach, and with it the condemnation and ruin of the man with whom he was so quietly conversing! This is the last time he saw Dr. Webster before Trenholm and Starkweather came there in the afternoon; and it is remarkable, as it seems to me, that from that time forward, though the breach in the wall was on that day to be completed and the overwhelming discovery to be made, we do not learn from him in all the details or in any part of his testimony, that he knew whether Dr. Webster was within, or was absent from, the College, or that he went to any of his doors to ascertain the fact. And, for aught that is stated, or testified of by him, I cannot see but that he commenced his work upon the wall, and set his wife upon guard to watch against the advent of Dr. Webster, without having first taken the slightest precaution to ascertain if he was not then personally present in his laboratory.

But now he procures more fitting and effectual tools from Mr. Fuller, and resumes his labors upon the wall. Mark the peculiar reasons which he now assigns for entering upon the work. It was, he says, because he could not go up town without being told that the body was under the Medical College; he went to work there, he says also, to satisfy his own mind as well as the public. He was moved more by other considerations than those prevailing suspicions which he had adopted so early, and so faithfully cherished. And though he had divulged them, on what he deemed fitting occasions, first to his wife, and afterwards to Dr. Hanaford,

his hired man, Mrs. Harlow, and Trenholm; and on Friday, to Drs. Bigelow and Jackson, the last of whom solemnly said to him, "Do it before you sleep," — yet he was moved to the resumption of his labors by those minor and almost trifling reasons to which I have just adverted! And in what state of mind and with what feelings were those labors renewed? He was engaged in a work as serious as that which occupies you in this most painful and solemn trial; he was to find in the dark recesses of the vault he was opening, the body of a most respected citizen who had been foully murdered; and, by finding that, was to bring out proof against another respected citizen, which, upon a charge of murder, would consign him to an ignominious grave. Yet mark his language to the Fullers; he *joked* about it as he took the tools to go on with his work.

He descended to the wall, and proceeded to complete the breach which he had commenced. At length, Starkweather and Kingsley, and afterwards Trenholm, came to his house; and he was interrupted, and discontinued his labor. But the work was nearly accomplished; a hole of the size of the bar had already been made, and he had scarcely more to do than to apply its force once more and complete the breach. He came up, however, and entered into conversation with these officers of the police. Starkweather put this question, as he testifies, though Littlefield omitted to mention it, "Has every place in this building been searched?" to which Mr. Littlefield replied, "Yes, except the privy of Dr. Webster." As a reason for this inquiry, you will recollect Littlefield says that suspicions that the body was concealed in the College were nearly universal. We need not stop to consider how far they had been fomented by the agency of Littlefield himself. He told Starkweather, that every place in the College had been searched except the privy. "Well," said Starkweather, "let us then search that now." "No," was the reply of Littlefield, "we cannot do it now; the Doctor has got the key — the key of his apartments — and we cannot do it to-day;" upon which Starkweather said they would come in the morning, and make the examination of the privy; and Starkweather and Kingsley departed without further information. Why were they thus summarily despatched away? Why not have had disinterested witnesses present when the perforation in the wall, now so nearly accomplished, should be completed? He had conversed freely with them of the crime supposed to have been committed, and of his suspicions or convictions of the guilt of Dr. Webster. Of these opinions he made no secret, and no sense of delicacy restrained their utterance. But still he

was not prepared to let them see the blow struck which should let in light upon the privy vault, and they were sent away. Trenholm also was dismissed with the assurance that the work was almost done; and, if he would return in twenty or thirty minutes, he should be informed of the result. Did not Littlefield too well foreknow the information which he should soon have to communicate? Why else did he rid himself of the presence of all spectators? Why else would he have it that no human eye but his own should look into the vault, until he had first seen these remains there in safe deposit? Were not all things yet ready there for the inspection of others? These are fearful questions, of pregnant suggestion, of momentous import. I leave the answer to your own reflections.

Littlefield penetrated the brick partition with singular accuracy and precision, just by the foundation-wall on the north side of the building; and there, exactly in front of the breach he had made, though a few feet distant from a perpendicular line, dropped from the hole in the privy, were found, when seen by others, the remains of a human body. Is this accuracy of the work upon the wall consistent with ignorance of their position within the vault? Could they possibly have been placed there, in that particular spot, by any efforts through the hole in the privy?

I bring to your attention these material facts, and these most suggestive considerations. If they cannot but fill the mind with startling difficulties and perplexities in relation to Mr. Littlefield; if they demand explanations which cannot be given; if the just effect of them is to implicate him in any connection whatever with these remains before the breach was made in that foundation-wall, then you cannot, and you must not, place any reliance upon his testimony. And if, through the loss of this testimony, the great chain of circumstantial evidence which presses upon this prisoner's life be interrupted or broken, the whole mass of net work, the great theories and hypotheses of the Government, will give way and disappear, as the cloud and the mist are dispersed by the beams of the rising and refreshing sun.

Allow me to contrast for a moment with these considerations, so deeply affecting the credibility of Mr. Littlefield, the improbability that the manifestations of which he has testified would have been afforded in the conduct of Dr. Webster, if he had really been guilty of the homicide with which he is charged. Would he have recklessly so changed his whole conduct as inevitably to have invited suspicion? With the means of complete concealment in his own small private

room, which was always kept locked, or in his privy, which no one but himself ever entered, would he have unnecessarily barred and fastened his outer doors, so as to make proclamation, in voiceless but most intelligible language, that there was the evidence of deadly crime within? Would he have multiplied the chances of detection by disposing of parts of the body in different places? Would he have built fires where fires were never built before, and of such intensity as unavoidably to attract attention? Would he have identified himself as the person who secreted the remains in the tea-chest, by the senseless fastening of the twine from his own ball around the bone of the thigh? Nothing could be more unnatural than such a supposition, and therefore nothing can be more improbable than his guilt. Yet, while many of the appearances which have been described are absurd and incredible when applied to him upon the supposition of his guilt, they cease to be so upon the assumption of his innocence, and are perfectly reasonable and consistent with the hypothesis of an unknown and secret agency.

And from these, let me approach with you to the consideration of other, circumstances having the strongest tendency both to support such an hypothesis, and to supply manifest presumptions in favor of the innocence of Dr. Webster. If a a homicide had been committed in his apartments, it must inevitably have left there visible traces of its commission; and either the traces of the crime, or of the efforts to remove them, would have been open to easy discovery. If none such have been found, it is not because there was no opportunity or attempt to find them. For days and weeks, those apartments were made the place of a perpetual hunt by the policemen who had charge of the building, and every inch was scrutinized by their watchful eyes. The floors were broken up, and the bricks of which they were composed were subjected to the most careful examination. But it was a fruitless search. No discoveries were made. Where are the traces of crime? Where the blood which must have been shed? You have been told by the physicians of the great quantity of blood in a human body; and, if a human being had been killed there, do you not believe it would have streamed upon the floor, or been dashed upon the walls or the furniture? Yet what is found? A half-dozen drops upon the left side of the left leg of a pair of pantaloons, and two or three upon a pair of slippers, which had been for years in that chemical laboratory; and that is all. Both had been there for years, — for years in a place where, Professor Hors-

ford tells you, the use of blood is neither unusual nor uncommon; and no one pretends to tell how long these spots had existed, — whether they were of long standing or of recent impression. Do you think this will do to justify a presumption that the stains upon them were of blood which had flowed from the person of Dr. Parkman? Or that they are indications of the perpetration of a crime of violence? It would be idle to think so; the premises afford no basis for such a conclusion. And yet, excepting these, not the slightest vestige, trace, or mark has ever been found there, which can be pretended to have been the consequence or effect of personal injury.

No; there were no marks of such violence in these apartments, or upon any instrument or thing which was found within them. Not a drop of blood dotted the floor or discolored any part of the wall. The knife concealed in the tea-chest was clean and untarnished; the yataghan bore no stain upon its sheath or blade. There was acid, but not blood, upon the floor and upon the towels. The overalls, which Littlefield testified were carried away, and which he more than intimated were probably covered with stains, were never removed at all, but made a pillow for the policemen for weeks; and Professor Horsford told you, that upon careful examination no indication of blood was discovered upon them.

Is not this total absence of any mark or trace of violence a most pregnant manifestation of the impossibility of its occurrence there? It must be so; for it cannot stand within the compass of any reasonable belief, that two vigorous men like Drs. Parkman and Webster, — who, if advanced in life, were still strong and muscular, — should have met in those apartments in mortal struggle; that one of them should immediately have died under the infliction of blows of mortal violence, and his body have been cut into numerous parts by a rough dissection, without leaving somewhere, upon the pavement, the wall, or the furniture, the lasting tokens of their deadly encounter.

If the absence from these apartments of all visible indications of the necessary effects of the violence by which life would be destroyed affords a presumption of the innocence of Dr. Webster, the actual presence of the remains there a week afterwards tends still more irresistibly to the same result. The means both of effectual secretion and effectual destruction were within his immediate reach. The vault of the dissecting-room was by the very side of his own door; he was himself a practical chemist, and perfectly well understood the

power of chemical agents over human muscle and human bone. If he had meditated the murder of Dr. Parkman, — if he had coolly deliberated upon the perpetration of that atrocious homicide, he would have provided also in advance for a speedy and effectual disposal of the body. Even with the vessels which he had, and with the agents in his laboratory, if not sufficient entirely to dissolve the whole of it to one liquid mass, he could, upon the testimony of Professor Horsford, with the means in his possession, have destroyed in a very brief space all traces of identity. He could, beyond all question, have cut up the body into minute fragments, and thrown them into the dissecting vault, where they would have been beyond the power of all possible recognition. By either process, the destruction would have been most easily completed, and the possibility of identification most effectually prevented.

There cannot, in my judgment, be a greater improbability than the supposition that he should have committed the homicide, and foreborne the exertion of the power he possessed for the utter annihilation of the body. The preservation of remains which his safety so vitally required him to dispose of with the utmost despatch, and when he must have keenly felt that the peril of his situation would tolerate no delay, was what could not for a moment have been thought of or allowed by him. The very fact, therefore, of their existence in his apartments for days after they might have been utterly annihilated, or their identity completely effaced, is diametrically opposed to the theory which connects him with the homicide, and sufficient to overcome and overwhelm any deduction or conclusion in its support which the Government would draw from the surrounding masses of its circumstantial evidence. But all these circumstances, so unnatural, so improbable, — I may say, so almost impossible, — when pointed to Dr. Webster, are perfectly consistent with the hypothesis of our defence. They are easy of belief, upon the supposition that all these appearances were produced and occasioned by an unknown hand, — a supposition which gains immeasurable strength from another consideration. While the scientific knowledge of Professor Webster would have insured the most prompt and effectual annihilation of the body if he had attempted it, the clumsy blunder of the imperfect, insufficient, and incomplete effort to dissolve it with potash, as it was held over the fire, gives unerring assurance of another and far different agent; and proves, with no common force, that some unknown individual wrought out all that melancholy work,

the awful consequences of which the Government are now seeking to impose upon my unhappy client.

But these presumptions in his behalf do not terminate as you cease to reflect upon the more immediate objects which were around him in the Medical College. They spring up on every side, wherever you can obtain new opportunities of observation, continually unfolding increasing improbabilities of his guilt, and growing stronger and stronger the more his conduct in every relation of life is subjected to your examination. At every turn you take, and wherever you advance, they will multiply upon you.

Follow him away from that place now associated with so many painful and melancholy reflections, and observe his return on the memorable Friday of the disappearance of Dr. Parkman, to the tranquil intercourse of domestic and social life. Watch all his movements, and see if you can discover in any part of his demeanor one suspicious sign, — one token, — that might betray that he came from the scene of atrocious wickedness, while his hand was almost yet wet with the blood his violence had shed. The early part of the evening was spent with his wife and children, in the usual occupations of the family, after which he accompanied his daughters to the house of a friend where they were to attend a party, and then went with his wife to Professor Treadwell's. You have heard from him, and from Judge Fay, how the evening was passed there; — in social and varied conversation upon different topics of common and public interest. Returning home, he waited for his daughters, who did not come in until after midnight; and the family soon after retired to rest for the night. During all this period, at home and abroad, not a circumstance occurred in all his actions or conversations which attracted attention, or indicated to any observer the slightest peculiarity of appearance. No emotion betrayed, no excitement or depression denoted, the occurrence of any unusual or remarkable transaction. He was neither absent-minded, nor full of fits and starts, nor frightened at the sound himself had made, but calm and self-possessed, constantly social and at ease, alike when surrounded by his friends or by his family. Is it possible to suppose that this ease and serenity could so immediately have displaced the mental agitation and horror which cannot but attend the perpetration of a desperate crime? Were ever human nerves known to sustain such a steady tranquillity upon such a violent transition as that? I pray you, answer me. All experience forbids its belief. When life is but jostled by some trifling interruption of our daily walk, there is left a trace

behind, which will be marked by those who know us. Some disappointment occurs in our affairs, — the treachery, it may be, of a friend distresses, or the outbreak of some calamity which affects our interests, disturbs our minds. We return to the soothing influences of home; but we cannot so suppress the manifestation of our inward feelings that watchful eyes will not there observe them. They who are familiar with our daily thoughts and daily life need but a glance to detect an emotion which disturbs our usual serenity; it cannot be hid from the penetrating affection of the wife who cherishes her husband, nor from the loving and devoted children who are quick to note the first variation in a parent's smile, — a parent's cheerfulness. Can it be, — (it is a question for your experience and your hearts,) — that Dr. Webster could have been so unmoved, unaffected, undisturbed in the presence of his wife, his children, and his friends, if he had, immediately before he met them, committed the daring, atrocious, unspeakably great crime which is charged against him? To have done so, he must have been more or less than man. But if, like you and me, he was a man moved by the ordinary influences which affect our common nature, I ask you if the accusation can be true? I pray you, remember these great presumptions in his favor when other circumstances are pressed into the scale against him.

Every suceeeding day afforded to all who saw him new revelations of a similar character, equally incompatible with the supposition of his guilt. Saturday was spent partly at home, and partly at the College in Boston; but no one pretends to have discovered anything in his conduct or demeanor which was unusual or peculiar. It was in the evening that he first obtained information respecting the disappearance of Dr. Parkman; he learned it from the public notice which his friends had caused to be given in an advertisement published in the evening papers. That notice announced that Dr. Parkman had left his house to keep an appointment at half-after one o'clock on Friday, with some gentleman who was unknown to his family. Dr. Webster saw at once that he was the person to whom allusion was made; and he saw also, what is a most material consideration, that no one knew of the appointment or interview between Dr. Parkman and himself. If he had committed the crime, here was satisfactory assurance that, up to this hour, his secret was in his own keeping; and he had every reason to believe, that, if the friends and the community were ignorant altogether of the person with whom the appointment was made, he had only to persevere in silence, and it would rest for ever in universal darkness.

But, though he was thus assured that no knowledge of his being the person who had made the appointment was possessed by any other than himself, he knew also that that appointment had no connection with the disappearance of Dr. Parkman, and therefore he had no secret which he could desire to keep. He would have gone early into Boston on Sunday to convey the information to the family of Dr. Parkman; but he was persuaded by his wife to postpone it until after the religious services of the morning in the College Chapel. Soon after dinner, he went into the city, and met, first, Mr. Blake, the nephew, and afterwards Dr. Francis Parkman, the brother of George Parkman, and informed them that he was the person with whom the appointment was made; and he stated also the fact of the meeting between them, and all that had transpired at it.

Yet even these communications, so unlikely to have been made at all if he was guilty, and so perfectly natural if he was unconscious of any crime which could be imputed to him, are thought by the Government to furnish considerations which may be turned against him. Mr. Blake represents, that, in relating the circumstances of the interview, Dr. Webster exhibited in the earnestness of his manner some visible agitation. On the other hand, Dr. Francis Parkman tells you, that he could not but notice the want of sympathy and the formal business-like manner which accompanied the communication. To the one whom he held by the hand as he rapidly adverted to the several incidents of the interview, he seemed too warm; to the other, oppressed by the affliction he was suffering, and surely not in the best state of mind for cool observation himself, he appeared too cold and distant and formal. And each of these opposite objections is urged with equal confidence against him, as if they were portentous signs of guilt; and, conflicting as they are, there is some danger of their injurious influence, unless that danger be averted by your calm and deliberate reflections.

It is difficult, if it be not impossible, to judge what would be the manner or deportment of an individual in such a situation. His appearance would probably seem to vary, even if it were substantially the same, according to the circumstances and conditions of the mind of the party addressed. Still there may have been on these two occasions some difference in his deportment. Casually meeting Mr. Blake in the street, the communication would be, not unnaturally, with less of ceremony and more of despatch than would occur in the full and detailed statement to Dr. Francis Parkman at his house

in the presence of his family. He told the story to each of the parties, in the situation in which he found them, as well as he could. And I submit, that no prejudice should be created against him by their representations of his personal appearance; a prejudice which would unjustly overcome all the advantages to which he is fairly entitled, arising from his prompt and voluntary communication of facts, of which he had ample assurance that no other person than himself had the slightest knowledge.

While it is obviously most improbable that he would have made any communication at all, if he had secretly taken the life of Dr. Parkman, it is on the other hand perfectly natural, that he should have availed himself of this early opportunity to relate the circumstances, if the incidents stated by him to have occurred at their meeting actually took place. He would also naturally go further; he would early look after his own interest in those particulars which, from his narrative, it is apparent would have required his attention. Accordingly, if you go with him as he returned from Boston on Sunday evening, you will find that he called upon the City Clerk in Cambridgeport to see if Dr. Parkman had been there to discharge the mortgage which he had agreed to cancel. All, however, that he could do was to make the inquiry; and, having done so, he could only return to his family. There he was met soon after by Mr. Thompson and Mr. Fuller, with whom he conversed at some length, and with perfect freedom, in relation to the events of the preceding Friday, and of the mortgage which Dr. Parkman had promised to have discharged. If in this interview, Mr. Fuller, the policeman, — belonging to a class of men, whose occupation makes them proverbially too susceptible of jealous suspicions, — thinks he saw tokens of agitation in the manner of an individual to whom he was a perfect stranger, you will recollect that the more intelligent and impartial witness, Mr. Thompson, who was chiefly engaged in the conversation, perceived nothing of the kind, or any want of ordinary quiet and self-possession.

All the events of the remaining parts of the week abound with the same significant indications. From day to day he was employed in his usual avocations, — occupied in his common and ordinary pursuits. On Tuesday he lectured to his class in the very rooms where, if you believe in his guilt, he must have been conscious that the bleeding body of his murdered victim was yet lying almost at his very side. But, though many were present to hear him, you have been told of no emotion which he evinced, no perturbation which

betrayed a feeling he would suppress, or a thought he would conceal. Can it be, in the very nature of man, that it could be so, — that such steady self-possession could have been maintained upon a spot where every object would crowd upon the imagination images of appalling horror, against which no strength of preparation can fortify the human heart? But not there alone; wherever he is seen, or however engaged, the same ease and freedom and tranquillity are observable in all his deportment. He receives his friends at his house; he meets them abroad; at the iron-foundry of Fuller, where he wrote the check and spoke of Dr. Parkman, — at the apothecary Henchman's, where he is told the story of mesmerism, and the bloody cab, — at the tinman's, where he ordered the box and conversed with Waterman, — with Littlefield, on the morning of the 30th of November, — in all these situations, you see him easy and unaffected, quietly participating in all his usual pleasures and pursuits. And during all this time, this man, so forlorn and wretched as he must have been, if he be the villain which the truth of this accusation would make him, mingles freely with society, discharges the duties of his responsible professorship, is most clear in mind and regular in all his actions! It is not possible to believe, — it is not within the limits of credibility, — that consciousness of the perpetration of the worst of crimes should lie hid and concealed beneath such external manifestations of tranquillity; — such uniform ease and simplicity in daily life. Yet such appearances never forsook him.

On Friday the 30th of November, after visiting Boston, and transacting business in various places, and participating in conversation with many individuals upon different subjects, he returned in the latter part of the day to his family in Cambridge. In the evening came the officers and ministers of the law. They went indeed without legal process, — without any authority which could vindicate their proceedings, but still acting in perfectly good faith, and believing that they should be fully justified in the course they were to pursue. The remains of a human body had just been discovered in the vault of the Medical College; and, under the startling influence of that discovery, Messrs. Clapp, Starkweather, and Spurr, were sent by the chief of the police to seize the person of Dr. Webster. On their arrival at his house, they found him perfectly tranquil, waiting upon a visitor who was just leaving his door. They did not disclose to him the purpose for which they came; but Mr. Clapp, to whom he was personally known, informed him that it was proposed that further searches

should be made at the Medical College for the body of Dr. Parkman, and that it was desired by the persons by whom it was to be made that he should be personally present at the examination. He gave the most prompt and ready assent to his request; put on an outer garment, and was ready to accompany them. As they were leaving the house, he said, "Stop a moment, I have left my keys; I will procure them." He was told by Mr. Clapp that there was no occasion to do so, that they could get into the rooms of the College without them.

They all then went to the carriage, which was waiting at a short distance from the gate, and started for Boston. A free conversation between the parties immediately ensued. They spoke of Dr. Parkman, and the searches which had been made to discover what had become of him. Dr. Webster participated freely in the remarks which were made, and answered several inquiries which were put to him, — particularly in relation to the interview between himself and Dr. Parkman on the Friday preceding. The conversation at length changed. Other topics were introduced, — among them, the Harvard Branch Railroad, then in process of construction. When they arrived near the residence of Mrs. Coleman, Dr. Webster spoke of her, and of her having seen Dr. Parkman subsequent to the day when he was last seen by his family; and he proposed that they should stop at her house, and make inquiries of her upon the subject. But the proposal was not acceded to, and they continued to go on. The conversation was resumed, and was calmly and quietly kept up all the way to the city. Nothing of particular interest was said, and no peculiarity of appearance attracted the attention of the vigilant officers who held him in custody.

Now, suppose that Dr. Webster had committed the crime with which he is charged, and had concealed the lifeless remains of the body of Dr. Parkman in his own apartments. Upon this supposition, he knew that the thorax and the thigh were hid in the tan in the tea-chest standing in his laboratory, and that other parts of the body had been thrown into the vault beneath it. He knew also certainly, that, twice before, his own apartments had been carelessly searched by the police, and that they had then professed to have no suspicions against him. He now finds three officers come for him late in the evening, to go there and make a further search. The act and the proposal were too significant to escape the notice of a guilty man, — of one whose apprehensions must have been

at all times painfully quickened, and who could not but have understood from this unusual movement, that a discovery had been made, or that such a search was then to be instituted as would certainly lead to it. If he had been guilty, do you think that his nerves would have upborne him then? I know not the man whose power of resistance could have sustained him under such alarming and overwhelming circumstances. Innocence alone could have carried him through, — for he would then have had nothing to fear; the consciousness of guilt would have prostrated all his strength, because that consciousness would have assured him, that, if no discovery had already been made, he was being carried to the place where his detection and exposure would be swift and inevitable. And yet, on an occasion so certain to inspire a mind conscious of guilt with irrepressible alarm and terror, he acted and moved as calmly and tranquilly as when his united family were gathered around his daily table.

As they were crossing the river, allusion was made by the officers to the supposed discovery of a part of the garments of Dr. Parkman; and the place where they were said to have been found was pointed out. It drew from him a simple reply, but produced no other effect upon him. The carriage was driven past "Second" street, which turns to the right after leaving the bridge: he observed that a mistake had been made, and said, "You are going wrong; you have passed the street which leads to the College." "No matter," said Mr. Clapp; "the driver is a green fellow, he will get us there at last." This reply, though so equivocal and evasive, satisfied a mind that was disturbed by no fear or distrust. His calmness continued. They at length reached the jail, and halted at the door. Mr. Clapp alighted, and immediately asked the persons within to descend from the carriage, and stop there for a moment. They all went into the outer room, — the common room of the jail. Mr. Clapp proceeded to the inner apartment of the jailer, and requested the others to follow him there. They all did so; and then for the first time, as Dr. Webster looked round in the dim light which feebly broke upon the darkness of that apartment, vague apprehensions suddenly started up in his mind. "What," he demanded, "does all this mean?" Mr. Clapp plainly and coldly told him in reply, "It is no longer of use to deceive you. We have been sounding in and about the Medical College; we have done searching for Dr. Parkman; we shall look for his body no more, and you are now in custody upon a charge of murdering him." The prisoner started suddenly back, with the simple exclamation, "What,

me!" His voice faltered, as his heart sunk within him. Yet he rallied in a moment, and attempted, says Mr. Clapp, to articulate one or two sentences; but his language was not understood. He began to say something of the crime with which he was charged; but he was promptly stopped by the officer. He desired that his family might be notified immediately of his situation; but he was answered, that it must be delayed till the morning. He next wished that his friends, of most respectable character, Mr. Dexter and Mr. Prescott, might be sent for; but he was told that he could see none of them then.

Thus repelled and frustrated, his thoughts must have reverted to his extraordinary condition. He had been deceived; and he knew that he had been deceived by those officers and ministers of the law in whose presence he was standing, and in whose keeping he was a prisoner. They had told him one thing, and they meant another. No matter that it was from good motives or for honest purposes; they did deceive him, and he knew only the fact of the deception, not the motive which prompted it. He solicited information, he attempted explanation, he asked for the aid and the presence of his friends; but they refused his requests, and checked his utterance when he would have spoken of the crime with which they charged him. He could do no more. Shocked by the present deception which he knew, he could only fear, without comprehending, what was the remoter deception which had led to his arrest, and which might put in peril his existence. His strength forsook him, and he became weak and helpless as a child upon its mother's breast. Helpless, if not hopeless, he had no selfish thought of himself, or of the perils of his condition, or of the means of extrication or escape; but with the simple exclamation, "My children! what will they think of me?" his utterance ceased, and he sunk into deep silence.

He was left in this condition in the custody of a single officer; while the others, after preparing a *mittimus* for his commitment, went abroad to complete the arrangements which his arrest made necessary. While there alone, in faintness of body and feebleness of spirit, — bowed and overcome as he was, though more by the deception which had been practised upon him than by the accusation and arrest, — his faculties disordered, his mind shattered and broken by a stroke which I know not how any man could bear, — he appealed to Mr. Starkweather, if something might not be told to him; — if some information might not be given him. But the response forbade all hope,

and he sank back in his chair, scarcely able to sustain himself from falling to the floor. Thus rejected and forlorn, he turned within himself, and a few broken ejaculations escaped from his lips, which that zealous policeman, Mr. Starkweather, as he sat watching over him, instantaneously put down upon paper to be preserved for future use. And those words, — uttered in that state, that awful, overwhelming, cruel state of mind, — are now brought here and detailed to you to work out his conviction. And it was not enough that this officer should have thus watched and recorded the spontaneous utterances of his prisoner; he led his mind to the suspicion of another individual as the perpetrator of the crime for which he was himself arrested, and under the charge of which he was now so bitterly suffering. It was only when he was asked by Mr. Starkweather, "Who had access to his rooms?" that his thoughts recurred to the porter who made his fires; and it was then that he feebly added, "That villain! I am a ruined man;" — an exclamation which was the natural and almost the necessary consequence of the inquiry by which it was suggested.

Is that a confession? Were such words, uttered under such circumstances, induced by a question so likely, not only to suggest but to make the answer, to be treated as an admission of guilt? Are you ready to admit that the Government are right when they ask you to consider it as a constructive confession? Such a conclusion will be instantly rejected by every heart that can feel, by every mind that is capable of reflection.

Go with me now, still further, and observe him at a later hour, and under other circumstances. The officers return; and Mr. Parker, the Attorney for the Commonwealth, is with them. He and Dr. Webster had long known each other, and now a few brief and painful words passed between them. The prisoner, careless of himself, unmindful of his own personal peril or sufferings, thought only of his family, — spoke only of them, and wept for his children. His yearnings for sympathy from an old acquaintance were met only with the cold and repulsive answer, "that there was another family who had been in distress for the last week;" and the short conversation between them was closed. He was soon after inquired of, if he was willing to go with the officers to the Medical College to visit the scene of the alleged murder. Exhausted as he was, he made no objection, but yielded the most ready assent. The officers in attendance immediately lifted him into a carriage, and transported him to that place.

The doors of his apartments then were broken open in his presence, and the party stopped in the upper laboratory; — his private room.

I wish here to call your attention to an inconsiderable, but yet most striking and essential fact, most indicative of his innocence, because it shows that he had no consciousness that the remains of a human body could be found in the privy vault. From the moment that his faculties gave way at the jail, under the oppressive influences which crushed him there, he had been nearly helpless and almost speechless. It is the concurrent testimony of all the witnesses, that it was at this time and in this place, — in the private room, — that he found partial relief, and became comparatively calm and self-possessed. Remember that no remains of a human body had yet been exposed to him; that he had not been informed where the body had been found, or from whence it was to be brought. He had no knowledge that a hole had been dug through the foundation-wall, or that there was any possible access to the vault beneath, except through the privy. It was then, when he was there asked for the key of the door of that privy, upon the opening of which the contents of the vault, whatever they were, would be discovered and exposed, that he was the most quiet, composed, and self-possessed. He pointed out the place where the key could be found; and, when a wrong one was brought to him, he recognized it as the key of his wardrobe. This was the moment of his greatest calmness. Other circumstances had oppressed and overwhelmed him; but now, when the consciousness of guilt, if he were indeed guilty, would have tortured his heart with its sharpest pangs as he foresaw the instant and inevitable discovery of incontestible evidence against him, he quailed under no fear, but was comparatively restored to tranquillity and self-possession. Such composure, at such a moment, is utterly incompatible with the supposition or theory which attributes to him the deposit of those remains in the vault where they had already been found; but it forcibly confirms the hypothesis which assigns that awful work to a secret agent and an unknown hand.

This short period of partial restoration, — which affords in its occurrence at that time and place, and under those peculiar circumstances, the most convincing evidence to every diligent and faithful inquirer for the truth who will give just weight to moral presumptions, that the prisoner could have had no guilty connection with those remains, — quickly passed away. He was soon assisted to descend to the lower laboratory;

and there, immediately, before any development was made or any parts of the body were shown to him, the fit was on him again. His limbs could no longer perform their functions, and his mind lost all its firmness, and ceased thenceforth from all regularity of action. He literally sank down exhausted under the oppression of emotions which could neither be governed nor suppressed, and which cannot now be described or hardly imagined. From that time forward, he continued for many hours in the state of total prostration into which he had fallen. So utterly was he overcome and mastered by the complication of his sufferings, that he made no attempt to speak when the mangled limbs of the discovered body were exposed in his presence to the view of anxious spectators. When it was at length perceived how incapable he was of appreciating his own situation, or even of faintly observing the objects which were before him, it was determined to withdraw him from the College, and return him to the prison. He was then borne away by the officers by whom he had been supported. As he was placed by their strength in the carriage, he fell almost a lifeless body upon its seat. A kind word from Mr. Andrews, the keeper of the jail, — the first tone of kindness which had yet fallen upon the ear of the unhappy prisoner, — feebly awakened his attention; but he was scarcely conscious of the words he heard, or of those he uttered. A few broken sentences escaped him. "You pity me," he said, "what for?" "Because of your excitement," was the reply. "Oh! that is it," he added, and relapsed into silence, and spoke no more. He was transported back without further delay to the jail, and locked into one of its cheerless and solitary cells. Do you discern in these events and these exclamations, gathered from the testimony of all the witnesses who observed him during those hours of excruciating and indescribable suffering, the proofs upon which a fellow-being may be justly stripped of liberty and life, — his body sent to the scaffold, and his name consigned to infamy? It cannot be. It would be as unjust and criminal to take a word that fell from his lips during all this period of physical and mental prostration as a basis of conviction, as to go to the halls of the Insane Hospital, and seize upon the outbreak of the raving maniac as legitimate evidence upon which a victim might be hurried off by a capital execution to an ignominious grave.

The next morning found him in the same state of extreme debility and exhaustion to which he had been reduced by the overwhelming calamity which had befallen him. A few

hours more brought him partial relief. He awoke to new life, and with it to a faint sense of his awful and perilous condition. Of the means by which this effort for his ruin was attempted, and of the evidence upon which the terrible accusation against him was made, he was wholly ignorant. But, in the first moment of dawning reason from that night of darkness and shame and distress and agony, without the possibility of previous study or premeditation, he spontaneously announced, in a few and simple, but most comprehensive words, the whole of his defence. — "I do not believe," said he to a man whom he was then for the first time in sixty years to call his jailer, "I do not believe that those are the remains of Dr. Parkman; but I am sure I do not know how in the world they came there." That, still at this hour, is the defence on which he rests. He cannot tell you how they came there; he cannot unfold to you the deep mystery of circumstances which have been made to bear so fearfully against him. But he calls your attention unceasingly to that secret agency, the reasonable probability of which, he earnestly submits to you, the circumstantial evidence of the Government does not, to a moral certainty, exclude.

And, amidst all the uncertainty which cannot but accompany the conclusions and presumptions which are drawn from the vast and accumulated masses of that circumstantial evidence, he asks that the laws of his country shall secure his safety under the ægis of that reputation which sixty years of a quiet, humane, and peaceful life, have established and confirmed. He brings it to you in the fulness of uncontradicted testimony. He lays before you the testimonials of a whole community, from the President of the University to the mechanic at his bench. From all classes of his large acquaintance, as they cluster round him, you have one common voice bearing grateful witness of his gentleness and humanity.

And it *is* the rule of law, sanctioned by the highest reason and the widest experience, that, in every doubtful case, proof of good reputation shall turn the scale in favor of the accused. When evidence is complicated with conflicting probabilities, when it is not certain what conclusions reason may deduce from the mystifying mass of surrounding facts and collateral circumstances, it is then that integrity, maintained in toil and trial, comes in as a protecting shield; it is then that the law declares that he in whom virtue has been embalmed in an upright life shall at last be saved by its power.

Let the ample proofs which are before you of a life so spent by this defendant have that prevailing influence, now, in your determination of an issue where the accusation of the Government is supported by no direct evidence of any one essential fact; when that accusation is maintained only by inference and presumptions, which, if sufficient to excite the gravest suspicions, are not strong enough to exclude, to a moral certainty, the hypothesis of the defence. It is in such a case, where the great fact of guilt which should be proved beyond all reasonable doubt, rests only on the uncertain deductions of human reason from collateral circumstances, that the prisoner at the bar brings in his character and lays it before you. He lays it before you with all the proofs he can command of all that he has ever done within, around, or near the place which is alleged to have been the scene of an awful crime; and he adds and unites it to that mass of positive and convincing evidence, derived from witnesses of unsuspected integrity, by which he would satisfy your minds of the *alibi* of Dr. Parkman, and of his own innocence of the terrible offence with which he stands charged before you. He implores you, in view not less of your own solemn responsibility than of the unspeakable consequences to himself, to weigh all these considerations well; that, when your last hour's service in this Court shall have been performed, you may rejoice in the reflection, that all the claims of conscience and duty have been satisfied in the rendition of a verdict which shall sustain and save him in the day of his uttermost extremity; — which shall bring him back to freedom and the world, and restore him again to that once-happy home, of which no voice can tell the measure of sorrow or depth of affliction it has endured, or the light of joy by which it may even yet be illumined.

God grant him, in this day of peril, a good deliverance; and may He grant it to you also, that you may never reflect upon your final determination here, but with inward peace and satisfaction; — a peace that shall sustain you in life, and be to you a crown of joy in death.

Mr. Merrick completed his closing argument at half-past seven o'clock, P. M., and the Court thereupon adjourned.

ELEVENTH DAY. — *Saturday, March 30th*, 1850.

The Court came in at the usual hour of nine o'clock. The Attorney General immediately arose, and commenced the closing argument for the prosecution, as follows:—

May it please Your Honors,
and you, Mr. Foreman and Gentlemen of the Jury:—

In a cause of such magnitude and interest as this, I expected, and doubtless you expected, that all the resources of human ingenuity and eloquence, — all that professional fidelity, all that professional skill and adroitness could command, — would be brought into requisition, to exonerate this defendant from the charge which the grand jury have preferred against him.

In that expectation I have not been disappointed. The ability of the closing argument in his behalf yesterday, — an ability which challenges my admiration, when I reflect upon the chilling influences that must have pressed upon my learned friend, and which would have paralyzed less vigorous and elastic powers than his own, — shows that, to whatever conclusion the evidence may compel you to come, there has been nothing left unsaid or undone, which, consistently with truth, could have been said or could have been done for this prisoner.

But, Gentlemen, I had, if not another expectation, at least another hope. I expressed it, when I opened this cause to you a fortnight, nearly, ago,— that, when the evidence which the Government was prepared to lay before you had been all presented, the prisoner would furnish some explanation of the terrible circumstances that had woven a web around him, which seems now to be irresistibly contracting to his doom. And I grieve to say to you, after all that has been done and all that has been said, that hope is utterly disappointed.

I call your minds back, Gentlemen, to the statement with which this case was opened; a statement of the outline of what the Government expected to prove; — made, I submit to you, as I submit to the world, with a degree of moderation that indicated how sincere that hope was in my bosom:— and I now ask you, upon your consciences, to say whether that outline has not been entirely filled up; whether a single fact was then stated that has not been proved; whether the inferences which I then forbore to draw from those facts, are not now pressing upon your minds with a force that cannot be resisted.

I ask you, then, to consider how all this evidence has been met. We have waited long days and weeks and months for an explanation of it. This prisoner, although the inmate of a cell, has not, you know, Gentlemen, been, as the language of his counsel would imply, a forlorn and forsaken man, unaided and unable to prepare himself to meet the testimony of the Government. No! far from it. He has not, as my friend the opening counsel described him, been compelled to sit by, the victim of prejudice arising out of public rumor, waiting patiently till the day of his deliverance should come, through his explanations and his proofs in a court of justice. "A victim of prejudice," Gentlemen! I submit to you, whether that statement has any real foundation. I ask you, whether the very opposite state of things has not existed? Whether there was ever a man charged with crime, against whom such *prima facie* proofs of guilt had met the public eye and shocked the public heart, who was treated with such forbearance or met so lenient a popular judgment as has been extended to this prisoner? There has been from the beginning to the end, to a degree that is unprecedented, a reluctance to admit the possibility of his guilt.

Gentlemen, the course of this prisoner, with respect to the accusation against him, constitutes a strange, eventful history, that we can now look back upon, from the time when the mutilated remains of Dr. George Parkman were found in his premises: aye, and under his lock and key. There was first an examination before a coroner's jury, which, it is true, was secret. But the prisoner's counsel will do me the justice here to say, or to assent to what I say, that, before the evidence submitted to that jury had been read by me, it was placed in their hands to enable them to prepare their client for his defence. Neither the prisoner nor his counsel can come here and justly complain of anything which has been done by the officers of the law respecting him or his case. Never, I venture to assert, was a man put upon his trial for a crime affecting his life, who had received such consideration and indulgence from the Government as has been granted to this defendant. I am not aware that there has existed a single fact which has not been freely and fully exhibited to his counsel, to enable them to investigate and explain it; so that, when they came before a jury of the country, they might be prepared to say, — "We have known everything the Government has proved; we can explain it all; here is the explanation."

It has been the subject of an almost complaining and reproachful remark by the counsel, that there had been a secret

inquest when the prisoner was not present, and afterward a secret investigation by the grand jury, where he was not represented. It did not seem to occur to the counsel, though it cannot have escaped your observation, that there was another occasion, when the prisoner was present before another tribunal in this building, accompanied by the ablest counsel that the ablest bar in New England could furnish him; — that he then, either with or without their advice, chose not only to keep his own mouth sealed, but to say to the Government, — to say to the world, — "I am content not only to offer no proof in exculpation of myself, but I do not ask even for an exhibition of your proof against me." Intelligent as the prisoner doubtless is, upon the supposition that he was entirely innocent of the charge, what would then have been his course? Why, at least to demand of the Government to show its proofs.

Gentlemen, I appeal to the simple instincts of every one of you:—if you were seized by an officer of justice to answer to the charge of having committed a heinous and revolting crime, and forty-eight hours of reflection had given you the opportunity to recover from the shock, — powerful though that shock may have been, as counsel has represented it; — I ask you, whether you would not demand that the Government should show the proofs upon which it rested its accusation against you, an innocent man? Would you have said, — I care not whether with the advice of counsel, or without it, — "I am content to go into close confinement; to wait until it shall suit the convenience and pleasure of the Government to try me; and to suffer this good name which" — (as the counsel has told you) — "I have been building up for sixty years to be blasted, and the whole civilized world to have that name upon its lips in terms of reproach and execration: I am content to leave my family to suffer the torture, the suspense and agony which must attend a charge like this against a husband and a parent, without explanation or an attempt at explanation"?

Gentlemen, the time has now come when the long-postponed explanation was to be made; when passion was to subside; when the prisoner was to enter a court of justice, and feel that before a jury of his country he could be secure. And, now, what is that explanation?

I shall submit to your notice, that the evidence which the prisoner has put in here applies to but four propositions; and that upon that evidence, such as it is, have been founded four hypotheses by his counsel. The consistency of that evidence with those hypotheses, it is my purpose, before I close, to ask you to consider.

In the first place, in answer to all the evidence which the Government has produced, he has offered testimony to his previous good character.

It is a point, I may say in passing, that never was in controversy, — that he had a fair outside reputation; — how well merited from his real character, the other evidence in this case must, to a considerable extent, determine.

In the second place, there has been an attempt to show, that for him to be locked up in his laboratory was not an unusual thing; — an attempt by one witness, whose testimony has been effectually controlled by other testimony, independent entirely of that which has received the harsh comments of the counsel.

The evidence for the defence then tends to establish a third proposition.

Chief Justice Shaw. — What was the first?

Mr. Clifford. — The first was, that the prisoner had borne a good character; the second, that his being locked in his laboratory was not an unusual thing. — One witness only to that: — Mr. Eaton, the painter.

The third was, that the prisoner's conduct and whereabouts, during the week that intervened between the disappearance of Dr. Parkman and the discovery of his remains, were wholly inconsistent with his guilt.

The fourth proposition is, that the whole case of the Government is answered by proof, that, after the interview between the prisoner and the deceased on the 23d of November, they separated; — and that Dr. Parkman was seen abroad in the community after two o'clock in the afternoon of that day.

Now this case, Gentlemen, discloses certain admitted and uncontroverted facts, in considering which there is one proposition which I think cannot have failed to impress itself upon your minds. It is undeniable, that in this law-abiding community a great crime has been committed. The law has failed to protect the life of one who had the right to its protection. Is that law, which some one has thus violated, equally impotent to vindicate itself?

The Constitution and Government of this Commonwealth have for their highest object, — as it is the highest object of all organized civilized society, — the protection of human life; and, under that Constitution and Government, we have a system of law and the proper officers and tribunals to carry out that object.

If a case has ever arisen which could test the value of that constitution and that system of laws, and try the competency

of those officers and tribunals, it is the case now before us. And if ever the great and high responsibility of applying that test was confided to human integrity and intelligence, it is now confided to you. We are now to know whether the Law under which we live, is, or is not, a respecter of persons; whether, unlike that Divine Justice, whose character it is its noblest function humbly to imitate and follow, it is competent only to hold the weak and impotent in its grasp, but is itself impotent, when the high, the influential, and the powerful are charged with its violation. It is an old complaint, Gentlemen:

> "Plate sin with gold,
> And the strong lance of justice hurtless breaks:
> Arm it in rags, a pigmy's straw doth pierce it."

But, I trust in God, we have here a condition of society, a system of law, and a sense of justice, to which no such reproach as this can be applied.

Is there any doubt that George Parkman, — (the original proposition with which I opened this case,) — that George Parkman, a highly respected, almost universally-known citizen of this metropolis of New England, a man of large affairs and of extensive connections and interests, has been murdered? — Aye, and by a most remarkable coincidence, is there any doubt in your minds now, after hearing all that has been said by the counsel, — (whether the prisoner were the perpetrator of the crime or not,) — that Dr. Parkman was murdered in broad day, here, in this thronged city, in a public edifice which owed its erection to his munificence? — and that, in the ordinary avocations and intercourse of life, he went out from his home, to meet at noon-day, in that institution, his sudden and fatal doom at the hand of violence?

And, Gentlemen of the Jury, that fact being established, — no matter who was the murderer, — if the laws of Massachusetts and their ministers are impotent to ferret out and arrest and convict and punish the perpetrator of a crime like this, then is the sense of security and of safety which belongs to us as the members of a civilized society, gone forever! We had better go back, as we shall certainly be driven back, to that state of anarchy and barbarism in which every man's wrong is avenged by his own right arm.

And now consider the improbability that a false accusation should be made against a man like this prisoner. Thousands of eyes, Gentlemen, since that fatal event which struck and startled the heart not of this community alone but of the whole civilized world, have been opened; every circum-

stance has been heeded; every man has been watched; and the vigilance of our police, the keen eyes of justice, fasten upon this prisoner and look no further. If it be a false accusation, that, of itself, is another marvel and miracle, — greater than any of the mysteries suggested by the prisoner's counsel.

The complaint is, that there has been no direct evidence here, — (strong, as the counsel has admitted this mass of circumstantial evidence to be,) — no direct, positive evidence, that the charge against the prisoner is true; in other words, that no living witness has come upon the stand to testify that he saw the act committed by the prisoner, as charged in this indictment. Gentlemen of the Jury, how many murderers, think you, would have been punished, or ever will be punished, if a jury were required to wait for the direct evidence of an eye-witness to remove all reasonable doubt from their minds? If such a proposition could be maintained, what degree of security would there be for human life? You will consider, that, when crimes like these are to be committed, men take no witnesses with them; they avoid the sight of all eyes except that of the All-Seeing One, to whom the darkness is as the light, but whose presence is then forgotten.

I now proceed to a consideration of the nature and character of the evidence for the prosecution. In doing this, I shall furnish such authority upon its legal weight as seems to me a satisfactory answer to all the suggestions of the learned counsel respecting it. I shall then state in a brief, and, I hope, intelligible manner, the law applicable to the offence charged, and to the indictment which charges it. After reviewing the evidence which tends to prove that the act charged in the indictment has been committed, I shall then endeavor to satisfy your minds, that no other person than this prisoner could have committed it; and, in so doing, shall ask your attention to those portions of this voluminous mass of testimony which tend to fix and fasten the charge upon him.

I may also, in reply to the closing argument for the defence, dwell more, perhaps, than you may deem needful upon certain general considerations which arise out of the assumed improbability that such a man as Dr. Webster would perpetrate a crime like this; — upon the supposed absence of any adequate motive for its commission; — upon the incredibility of his maintaining, if guilty, such a deportment as was exhibited by him, in so striking a manner, during the week preceding his arrest; — and upon the course pursued by him in disposing of the remains of his victim. It will give me no pleasure, certainly, to comment upon his personal demeanor, — a matter

which I am aware is so capable of misconstruction in the case of persons charged with crime. But you will remember, Gentlemen, that this defence rests mainly upon these general considerations, and not upon any answer to the Government's proofs. An earnest and forcible argument has been constructed upon them. It is my duty to answer it; and to show, as well as I am able, that very different conclusions may justly and legitimately be drawn from them; — conclusions consistent, not with innocence, but with unquestionable and conscious guilt.

What, then, is the nature of the evidence upon which you are to try this cause and found your verdict? It is circumstantial. So, strictly speaking, is almost all evidence. We are not here, Gentlemen, as was justly remarked by the learned counsel who opened the defence, dealing with, or expecting to find absolute verities; — pure, absolute truth. That belongs, not to fallible man, but to the infallible and omniscient God. We are here to exercise such instrumentalities, as, under our system of law and in our state of intelligence, we can command for eliciting the truth. And when we have arrived at a conclusion through these instrumentalities, and our reasonable doubts are removed, then, our minds being satisfied, if we err, no such terrible consequences can befall us as have been shadowed forth in the arguments of the counsel.

What is circumstantial evidence? Is it so much less satisfactory than the positive testimony of an eye-witness to a fact? Why, Gentlemen, the testimony of a witness is not dependent entirely upon his integrity and veracity. The value of it, certainly, is not entirely dependent upon these. That depends, in no inconsiderable degree, upon his intelligence and his powers of observation. But if a series of independent facts are proved, which combined lead the mind by the stern and inflexible chain of logical sequence to a certain result, the mind must give credence to that result, and rest satisfied. Let me, in more forcible language than I can use, and with a wisdom I can never hope to equal, give you an exposition of this matter by an able, learned, and experienced magistrate, now gracing the highest judicial station of a sister State, who has long been an honor and an ornament to the Bench.

I refer the Court to the charge of the presiding judge in the case of *The Commonwealth* vs. *Harman*, reported in the American Law Journal, vol. 6, p. 123. It was a capital case, of deep and painful interest; — of a mother accused of the murder of her child. Chief Justice Gibson, in charging the jury, addressed them upon the subject of circumstantial evidence in these words: —

"I shall confine my remarks to the distinctive character and value of the testimony. No witness has been produced who saw the act committed; and hence it is urged for the prisoner, that the evidence is only circumstantial, and consequently entitled to a very inferior degree of credit, if any credit at all. But that consequence does not necessarily follow. Circumstantial evidence is, in the *abstract*, nearly, though perhaps not altogether, as strong as positive evidence; in the *concrete*, it may be infinitely stronger. A fact positively sworn to by a single eye-witness, of blemished character, is not so satisfactorily proved, as is a fact which is the necessary consequence of a chain of other facts sworn to by many witnesses of undoubted credibility. Indeed, I scarcely know whether there is such a thing as evidence purely positive. You see a man discharge a gun at another; you see the flash, you hear the report, you see the person fall a lifeless corpse; and you *infer*, from all these circumstances, that there was a ball discharged from the gun which entered his body and caused his death, because such is the usual and natural cause of such an effect. But you did not see the ball leave the gun, pass through the air, and enter the body of the slain; and your testimony to the fact of killing is, therefore, only inferential, — in other words, circumstantial. It is *possible* that no ball was in the gun; and we *infer* that there was, only because we cannot account for the death on any other supposition. In cases of death from the concussion of the brain, strong doubts have been raised by physicians, founded on appearances verified by *post mortem* examination, whether an accommodating apoplexy had not stepped in at the nick of time to prevent the prisoner from killing him, after the skull had been broken in pieces. I remember to have heard it doubted in this court-room, whether the death of a man, whose brains oozed through a hole in his skull, was caused by the wound, or a misapplication of the dressings. To some extent, however, the proof of the cause which produced the death rested on circumstantial evidence.

"The only difference between positive and circumstantial evidence is, that the former is more immediate, and has fewer links in the chain of connection between the premises and conclusion; but there may be perjury in both. A man may as well swear falsely to an absolute knowledge of a fact, as to a number of facts, from which, if true, the fact on which the question of guilt or innocence depends must inevitably follow. No human testimony is superior to doubt. The machinery of criminal justice, like every other production of

man, is necessarily imperfect; but you are not, therefore, to stop its wheels. Because men have been scalded to death or torn to pieces by the bursting of boilers, or mangled by wheels on a railroad, you are not to lay aside the steam-engine.

"Innocent men have, doubtless, been convicted and executed on circumstantial evidence; but innocent men have sometimes been convicted and executed on what is called positive proof. What, then? Such convictions are accidents, which must be encountered; and the innocent victims of them have perished for the common good, as much as soldiers who have perished in battle. All evidence is more or less circumstantial, the difference being only in the degree; and it is sufficient for the purpose when it excludes disbelief, — that is, actual and not technical disbelief; for he who is to pass on the question is not at liberty to disbelieve as a juror, while he believes as a man.

"It is enough that his conscience is clear. Certain cases of circumstantial proofs to be found in the books, in which innocent persons were convicted, have been pressed on your attention. Those, however, are few in number; and they occurred in a period of some hundreds of years, in a country whose criminal code made a great variety of offences capital. The wonder is, that there have not been more. They are constantly resorted to, in capital trials, to frighten juries into a belief that there should be no conviction on merely circumstantial evidence. But the law exacts a conviction, wherever there is *legal* evidence to show the prisoner's guilt beyond a reasonable doubt; and circumstantial evidence is legal evidence.

"If the evidence in this case convinces you that the prisoner killed her child, although there has been no eye-witness of the fact, you are bound to find her guilty. For her sake, I regret the tendency of these remarks; but it has been our duty to make them, and it will be yours to attend to them."

I now proceed, Gentlemen, to the statement of certain principles of law applicable to this case, which I shall address to the Honorable Court in your hearing. They are all involved in the inquiry we are now making.

We rely, may it please Your Honors, upon the well-settled principles of the common law, as recognized in this Commonwealth, in the case of *Peter Yorke*, subsequently affirmed by this court in the case of *Washington Goode*, and more recently in that of *William E. Knowlton*. —

A homicide being proved, unless it appears by a preponderance of the testimony to have been committed under reasonable provocation such as the law recognizes, is presumed to be malicious; and with this presumption, whether express malice is or is not shown, it is murder.

The distinctions between express and implied malice, which were properly taken, and upon the authorities so fully illustrated by the opening counsel for the defence, I do not propose to discuss. I concur in every proposition which was stated upon the subject of express malice. If the jury find there was premeditation in the mind of the prisoner, that ends the inquiry. That fixes it, upon all the authorities cited, as a case of murder. But, if there should be no satisfactory proof of actual premeditation, the law presumes, in the absence of any controlling evidence, that there did exist the implied malice, and it is equally murder.

Therefore, Gentlemen of the Jury, the proof of the homicide alone will be quite sufficient for sustaining this charge against the prisoner, whether you are satisfied of any proofs of the premeditation, or not, unless the proof in the defence shall satisfy you, that, when the prisoner and the deceased came together, there was not merely irritating and provoking language, but that there was a provoking blow on the part of Dr. Parkman, which led to another from the prisoner, and which proved fatal to the deceased; because, in implied malice, the provocation which the law recognizes cannot be a provocation of language, no matter how exasperating or irritating it may be. And if exasperating words were used, and a sudden blow were given by the prisoner with an instrument likely to cause death, yet, Gentlemen, he would be as much guilty of murder as if he had prepared and planned it for months beforehand, and had then beguiled the deceased to the College, and there carried into effect his previous purpose. Hence, we take no exception to any of the distinctions relied upon by the defence, between express and implied malice; and I only refer to them now, to say that you must have felt, as I did, a painful disappointment when this case was opened by the defendant's counsel; — that, while we were anxiously looking for an explanation of facts, we had the extraordinary spectacle of the counsel devoting two hours and five minutes to the discussion of the law, and ten minutes to the presentation of the facts. All the nice subtleties and refinements of the law of homicide were stated with the clearness and ability of an accomplished lawyer; but I ask you if they did not seem to be dwelt upon to conceal the scantiness of the facts upon which was to rest the defence.

Exception has been taken to this indictment. It is said, that although the Government may charge the homicide, as it has done in the first three counts, yet that it must be proved to the entire satisfaction of the jury that the homicide was committed in one or the other of those modes; and that the fourth count, in which the grand jury have charged upon the prisoner, that, by some means, instruments, and weapons, to them unknown, he did commit the murder, is not such a count as can be sustained in a court of law.

Gentlemen, if this were so, and the law were open to this reproach, we ought to have been saved the long and anxious labor of this trial. If this were so, I think this learned Bench would have required of the learned counsel, at an earlier stage of the proceedings, to produce conclusive authority to show that it was their imperative duty so to rule. Take the illustrations of the counsel in support of this proposition, — and none more cogent or effective could be presented, — and to what result do they lead us? Why, that if a man is so scientific in his deeds of blood as to be able to conceal the mode or the means by which he consigns his brother-man to a sudden and a violent death, although the fact may be proved upon him as clear as the day-light, he cannot be punished under the laws of Massachusetts! A most extraordinary and monstrous proposition! It may be that this Honorable Court may decide that this is the law; but the illustrations show where such a construction of the law would lead.

It is suggested that the lasso might have been cast around the neck of the deceased! Was there any evidence before the grand jury which could justify them in saying, upon their oaths, that this was the mode in which the murder was committed? So it might be suggested, that a galvanic battery could be so prepared as that a man walking over the wires would be prostrated and deprived of consciousness, and that by this mode the deceased might have been overcome by the prisoner. But where is the evidence of it?

The plain proposition is that laid down by Hawkins, in the 23d chapter, 84th section, of his second book, that, "in drawing an indictment for murder, or any other capital offence, the pleader must set forth the nature of the facts *as specially as the circumstances will admit.*"

Now, if it is known to the grand jury how the act was done, of course they must set it forth. If they should undertake, through their accompanying officer, to charge that the homicide was committed in a way and manner to them unknown, and afterwards, when the party is upon his trial, it

should appear — (and it might appear, for the jurors may be called to testify to such a point) — that he was stabbed, or strangled, or his life destroyed in any other way, and this was known to them before the indictment was drawn, then it could not be maintained. And that is the protection of the prisoner. "The nature of the facts" would not have been, in such a case, "set forth as specially as the circumstances admitted."

I will give but one illustration, and I submit it to the Honorable Court, as an evidence of the absurdity of this proposition. I derive it from the case itself. Suppose, may it please Your Honors, that Dr. Webster, with premeditation, had enticed Dr. Parkman into his laboratory, and had there, in a scientific manner, in some way to the jurors unknown, and also unknown to everybody else, murdered him; and had succeeded — in the mode indicated by the counsel — in destroying in the space of eight hours every vestige of his body. Then suppose that four most respectable professors of that institution had seen Dr. Parkman enter that laboratory; — that they had watched the entrances to it, and he had not come out; — that they had entered the laboratory and found his clothes and other property in the possession of Dr. Webster, and no trace of Dr. Parkman's body could be discovered. Suppose, further, that Dr. Webster, taken by surprise, had exclaimed in their presence, "I have murdered Dr. Parkman, — here is his money, — do not betray me:" he is then taken into custody; not another word is spoken; and he subsequently denies all knowledge of the matter, and there is no evidence of the mode in which he committed the murder he had once confessed. According to the proposition of the counsel, upon this precise state of facts, he might have walked the streets of this city free as the air, and the law could not have reached him! No! no! Gentlemen! I think I may, without presumption, anticipate the ruling of the Bench, and say, — This is not, and cannot be, the law in Massachusetts.

I maintain, if the jury are in doubt — (and they well may be) — whether the deceased died from a blow on the head by a hammer, or from a stab with a knife, — if they are doubtful by what means or instruments death was caused, yet if they are satisfied that Dr. Webster was the perpetrator of the homicide, — that he did deprive Dr. George Parkman of life, — then, no matter how he did it, he cannot, under this indictment, escape the violated justice of this Commonwealth.

In considering the evidence applicable to what the law

terms the *corpus delicti*, or the fact of the crime having been committed, Gentlemen, I begin with this proposition: — That the proof must satisfy you beyond a reasonable doubt, — (and by this is meant a doubt for which you can give a satisfactory reason to your own minds, and to others, if they ask it,) — not a *possible* doubt, — but a *reasonable* doubt, that Dr. George Parkman has been killed by somebody. Have you a reasonable doubt of that? If you have, I may stop here; for the case stops here. My labor is in vain; and your faith, Gentlemen, in anything else in this case, is vain.

It is said by the learned counsel, that there is no direct evidence that Dr. George Parkman is not now living; and it is gravely urged upon you, in the face of all this proof which we have had here, upon the testimony of Dr. W. T. G. Morton, and upon such improbabilities as the ingenuity of the counsel could invent, — it is gravely urged upon you, as a question in doubt, whether Dr. George Parkman still be in full life or no.

Why, Gentlemen, what have we been doing here for a fortnight past? What had been done before we came here? Have the solemn rites of religion been performed over unknown bones? Has his estate been administered upon, and have others succeeded to and entered upon the large responsibilities which belonged to him, — and yet is he still among the living? Oh! would to God it were so! Has there not been a search, which brought into requisition, not only the vigilant police of this city, but which made every man in it a policeman? — a search such as never was made before? — And no tidings or trace of him, living or dead, have been found, unless these mutilated remains and these calcined bones constituted parts of his mortal frame.

It is said —

> "The times have been
> That, when the brains were out, the man would die,
> And there an end; but now,"

under the invocation of the learned counsel,

> — "they rise again,
> With twenty mortal murders on their crowns
> To push us from our stools."

— Ay, Gentlemen, to push you from the stools which you occupy, — the seats of justice and the law. But the attempt will fail. I read it in your countenances. I read it in the proof which came from that witness-stand, — that you have no more doubt that those were the remains of Dr. George

Parkman, than that this, which is now addressing you, is my living voice. Upon this part of the case there is not left a particle of doubt.

But we are to consider, what was originally intended (I presume) to be presented as evidence, that these could not have been his remains; but which, upon the strength of the proof, has now been tortured into the foundation of another hypothesis, — the evidence of the *alibi,* so to speak, of Dr. Parkman.

What was the original purpose and object of the counsel, in undertaking to show that Dr. George Parkman was seen on Friday afternoon, the 23d of November, after two o'clock, and so along till five o'clock of that day? What was the original purpose of this evidence? Look back to the statement of the opening counsel for the defence, and you will see. Did an intimation fall from the lips of my learned friend, the junior counsel, that their evidence was to satisfy you, — what the senior counsel undertook to maintain as his hypothesis, — that there was a separation of Dr. Parkman and Dr. Webster, which reconciles the testimony of both the Government and the defence? That evidence was for the purpose of satisfying, or rather of raising a reasonable doubt in your minds, whether the remains were proved to be those of Dr. Parkman. That was the object of it; for that was really the great point in the defence. Dr. Webster had started it very early in these proceedings, and under circumstances which made the declaration pregnant against him, that "that was no more Dr. Parkman's body than it was *his* body." So they winnowed this community to find witnesses who could testify to having seen Dr. Parkman. And I venture to say, that, from the fifteen or twenty whom they might have presented here, they selected the five whose stories most nearly agreed. Can you doubt that they might have had fifteen more? But that would have placed him in so many places at the same time, that it would have been impossible for all the evidence to be true, without making him ubiquitous.

They have limited the evidence, therefore, to the testimony of Mrs. Hatch, Mr. Thompson, Mr. Wentworth, Mr. Cleland, Mrs. Rhoades and her daughter, and Mrs. Greenough. I shall examine their testimony, not only to show how fallacious it is with regard to Dr. Parkman's separating from Dr. Webster, but also as it bears upon the main proposition, that those were the remains of Dr. Parkman found in the laboratory of Dr. Webster.

Mrs. Hatch is the first witness. She places Dr. Parkman

in Cambridge street, going up towards Court street, at about a quarter before two o'clock on Friday afternoon, November 23d. This is all consistent with the statement of the Government. It was some time in the course of the afternoon she spoke to her sister of meeting "Chin," as she called him. Suppose a mistake of only five minutes; and Dr. Parkman, being in Cambridge street, turns upon his track while she passes on; he turns again, and goes into Mr. Holland's store. But there is another answer to her testimony. I suppose it to be philosophically true, that two persons, between whom there is a general resemblance of feature, form, and gait, would not be so likely to be mistaken for each other, as two persons who have some one peculiar and striking feature in common. Why? Because a general resemblance does not so much arrest the attention, and strike the eye, as a single marked peculiarity. And you see that the only impression that Mrs. Hatch received, was, that she had seen a prominent chin. She had no conversation with the supposed Dr. Parkman. She did not speak to him, nor he to her. She merely passed a person with a prominent chin; and in the course of the afternoon, she spoke of him, not as Dr. Parkman, but as "Chin;" showing what had arrested her notice.

Take the testimony of Mr. Thompson, the *biological* witness. He saw him, he says, at about fifteen minutes past two o'clock, in Causeway street. He did not speak to him. He thinks it was fifteen minutes past two o'clock that he saw him, because he looked at the clock as he came away from East Cambridge. That clock, we have shown to you by two witnesses, to be an unsafe and unreliable time-piece; and especially when it was first put up, last autumn. He merely saw him passing. He may have made a mistake, as to the hour, or the identity of the person. I do not suggest that he made a mistake as to the day; but I think he did mistake the time, or, more likely, the person.

Mr. Wentworth testifies that he saw him in Court street, between half-past two and three o'clock. The others saw him going at his usual gait. This witness sees him looking at the roofs of the houses. His attention is called to the fact of his disappearance, the next night; and he does not think it worth his while, notwithstanding the great public excitement, notwithstanding all the rewards, notwithstanding the suspense and anguish of desponding friends, to communicate so important a fact as this.

Neither Mrs. Hatch nor Mr. Wentworth saw him so as to

observe his dress. But, above all, with respect to Wentworth's testimony, he declares to you that Mr. Russell was with him; — a gentleman whom we put upon the stand, and who says that he was with Mr. Wentworth on an occasion when he saw Dr. Parkman. But though Wentworth fixes it as the only time when he was with Mr. Russell and saw Dr. Parkman, yet Russell says he cannot fix the day; and that it cannot be the day that Dr. Parkman disappeared, — for he heard of the disappearance the next day, and is confident that it would then have come to his mind, had it been on the day of his disappearance. I regard the testimony of Wentworth as so impaired by this testimony of Russell, as to be valueless.

Next comes the testimony of Mr. Cleland. His testimony, like that of Mrs. Rhoades, is dependent on two facts of memory that are independent of each other. If Mr. Cleland had said that he knew it was on Friday that he saw Dr. Parkman, because on Friday he met Dr. Parkman going into, while he was coming out of, a certain place, and he knows that he went into that place only on that day, and fixes it by other evidence that he was there, then he has but one fact — in respect to the time — to remember. But now he has two facts; — the time when he went to see the Rev. Mr. Wildes, and the time when he saw Dr. Parkman. He does not fix the time, except by the notes. But whether it was on that day that he saw Dr. Parkman, depends entirely upon the confidence he reposed in his memory. Then there is the matter of identity. How did he see Dr. Parkman? Unquestionably, we cannot doubt that there is a person, whose slender form, whose peculiar gait, so resemble those of the late Dr. George Parkman, that he was very frequently mistaken for him. Mr. Cleland says that he had not spoken to Dr. Parkman for several years; that he did not observe his dress; that there were persons intervening; that he passed by him, and did not nod, but thought that it was singular to see Dr. George Parkman walking with a labbring man, whom he at first erroneously supposed was in his company.

Then we have the testimony of Mrs. Rhoades and her daughter. I suppose that it is a matter which may be referred to, without being put expressly in evidence, that the sun set, on the 23d of November, at thirty-two minutes past four o'clock. It is proved that that was a cloudy day. "I saw him from a quarter to five to five o'clock," says Mrs. Rhoades. How near dark was it? How did she see him? Approaching? No! Not till she got up side by side. — Then she

bowed to him. She did not say he bowed first. Suppose it was another person resembling Dr. Parkman. Suppose he met this gracious lady bowing to him; — he would naturally return the salutation, though she was a stranger. She bows and passes on in the twilight. On Sunday morning, she first hears of Dr. Parkman's disappearance. She was a parishioner of his distressed brother, and it never occurred to her, through that Sabbath-day, — never through the Monday following, — never through the Tuesday following, until night, when her daughter returned from Lexington, — to communicate the fact. Then came the after-thought that she had seen him on Friday afternoon as late as five o'clock. Then she puts in another fact; — and I take the testimony of herself and daughter together, for it amounts to one; — another fact which is pregnant with significance: — that Dr. Parkman, when she met him, was in company with a gentleman wearing a dark-colored surtout, which she noticed as she passed him. Where is that gentleman? Why is not he here to tell us that he was walking in company with Dr. Parkman, on that day, at that hour, and in that place? Is not that fact conclusive that Mrs. Rhoades was mistaken? She is mistaken as to the day or the person, beyond all peradventure or doubt.

The testimony of Mrs. Greenough I need not comment upon. It was characterized by a fairness, by a scrupulousness, which I should have been glad to have seen imitated. "It was my belief, but I cannot be positive." Why, Gentlemen? Because she reflects that he has never been seen in the world since. That nobody has seen him, is one of the elements to be taken into consideration in determining whether *she* saw him, or whether *she* was not deceived in her impression that it was him.

If we satisfy your minds that Dr. Parkman's remains were found in that furnace, in that vault, and in that tea-chest, then that fact is just as much to be taken into consideration, to be weighed against this testimony to prove that he was seen after he entered the Medical College, as this testimony of the *alibi* is against the fact of those being his remains, or the fact that he never left that building alive. And I undertake to say, that all this testimony, if it were in reference to an ordinary case of *alibi*, where the party was still living, — the testimony of six witnesses, who swear that they passed the person in the street, did no business with him, did not speak with him, that there was a person with him at the time, who does not come forward, — would be extremely unsatisfactory. If Dr. George Parkman were living, and in this court-house to-day, trying

an action against Dr. Webster for having stolen his notes of hand, and the only defence were founded upon this testimony of an *alibi*, I should maintain with confidence to a jury, that the evidence was, in itself, too weak and insufficient to support it.

But what was Dr. George Parkman doing on that day when these witnesses think they saw him? — Roaming about the streets; now in Cambridge street, then in Causeway street; now in Washington street, going towards Roxbury; then in Court street, — examining the roofs of houses; again in Cambridge street, and afterwards in Green street. What was he doing? Was there ever anything so preposterous?

Consider this fact. — I believe the city authorities have made a computation of the number of persons that pass through Court street in a certain given time, during a business-day. I do not remember the number, though I think I have heard that it is thirty thousand; — thirty thousand persons, in a day of twelve hours. How many persons were there in the city who did not know Dr. George Parkman? There was probably no citizen of Boston more extensively known to its inhabitants.

Now, if Dr. Parkman were roaming about this city, as these witnesses describe, during the whole of that Friday afternoon, I ask you to say, upon your consciences, would it not have been possible to have produced here, to swear to the fact, — not six, or sixty, or six hundred, even; — six thousand, rather? Do you suppose that he could have wandered about this city during a whole afternoon, and no human being, except these six persons, see him? Well, what is the evidence? Why, that this great number of persons, who, if he had been in the streets, must have seen him, *did not* see him! This is shown by the search which followed immediately; — a search of the greatest possible extent, vigilance, and scrutiny.

But it is not merely the passing a person on the opposite side of the street, or on the same side of the street, or having a casual glance at him, that can give us a well-grounded assurance that we are not mistaken in this matter of identity, if we attach any weight to experience. We offered to put in evidence here, that there were persons who accosted a man, believing him to be Dr. George Parkman, and found they were mistaken when they approached to converse with him. We were not allowed to put it in. And why? Because, as the Court said, it was a matter of common experience. And I put to you, that it is a matter of common experience, — common to you and to me. I ask you, how

many times you have gone up to a person and spoken to him, or even attempted to take him by the hand, and then retreated with — "I beg your pardon, sir; I thought it was Mr. ——."

You may have seen my friend, Mr. Train, the District Attorney of the neighboring County of Middlesex, by my side, during one day of this trial. In the last capital trial I conducted with him in that county, I met upon the sidewalk, near the Leverett-street Jail, on my way to East Cambridge, on the first morning of the trial, a police-officer of this city. As I passed him, he said to me, "Mr. Train, good morning." I stopped, having this very matter of the disappearance of Dr. Parkman in my mind, and turned towards him. He asked, "At what time shall I bring over the subpœnas?" "In what case?" I inquired. "The Pearson case," said he. "Oh, at any time in the forenoon," I responded, and passed on.

On my arrival at the Court-room, I mentioned the circumstance to Mr. Train; and, at my suggestion, he met the officer with a reproach when he came with the subpœnas, for not bringing them sooner. "Why," said the officer, "you told me I could bring them any time this forenoon." "I told you? — when?" "Why, this morning, when you were coming over." "I have not seen you to-day," replied Mr. Train. "Why, certainly, I met you, and talked with you." "You met me?" "Certainly, I did." So confident was he of the identity, that he was ready to have gone upon the stand and sworn that he actually talked with Mr. Train; and when I told him that I was the person, and told him precisely what the conversation was, for a long time he honestly believed that we were playing a hoax upon him. Yet, Gentlemen, the degree of resemblance between Mr. Train and myself is no greater than is found between many persons here present, and between Dr. Parkman and many persons now living.

I alluded, in the discussion of a question that was mooted to the Court yesterday, to the celebrated case of Sherman, in Middlesex. That was an instructive case, upon this matter of identity. A person was arrested, charged with having committed an assault upon a little girl in Medford, and another upon another girl in Newton. One assault was committed on Saturday, and the other on Monday. A week afterwards a man made his appearance in Newton, and was recognized by two ladies as the person who had committed the assault, and who had been seen by them running away from the spot where it was committed. He was arrested and brought before a magistrate. He stated that he had never been in that

place before, which was untrue. The children were sent for, and in a crowd of a hundred people they both selected him. The parties from Medford came over, and they identified him also. He was indicted by the grand jury on two indictments, and they were both put to the jury of Trials at the same time.

The evidence of these two classes of witnesses from both towns, nineteen in number, was laid before the jury. They were positive, clear, and certain, in their testimony, that he was the person; the proof of identity was perfect and complete, when the Government's evidence was closed. The counsel for the defence then proved in reply the prisoner's whereabouts through the whole week, and particularly covering the two days of Saturday and Monday. He proved, by most respectable witnesses, and the most undoubted corroborating circumstances and facts, that on Saturday he rode out of Nashua on a stage-coach, and that on Monday he was at Manchester, in New Hampshire. The *alibi* was so conclusive, that the Government were compelled to abandon the prosecution; the learned Judge saying, that there never was so strong a case of identity as that made out for the Government, except the case which had been proved for the defence. It was shown that there were two persons as like as the two Dromios, not only in countenance, form, and gait, but even in the accident of dress.

Now, Gentlemen, to talk about a man's being satisfied by a passing glance that he saw a particular individual, who such a mass of proof as in this case tends to show was then numbered with the dead, — who has never appeared since that fatal day, — and to undertake to satisfy a jury of this, when all the probabilities are against the conclusion, — seems to me like asking a jury to surrender everything that is proved in the case, to the testimony of three or four witnesses about a fact in which they are more likely to be mistaken than about any fact to which they could testify.

But, beyond and above all this, however your minds may be affected by this testimony, let me now meet the proposition of the counsel for the defendant, by saying that, whether these people saw Dr. Parkman or not, as they have testified, is entirely immaterial to your verdict in this case. If you are satisfied upon the other branches of this case that Dr. Parkman's remains were found in the premises of this prisoner, and if the evidence connects him with those remains, — then what matters it whether Dr. Parkman was seen after two o'clock on that day, or not?

The Court will tell you that the time when this homicide was committed is immaterial. It may have been on one day, or another; it may have been at one hour, or another. And if these witnesses did see Dr. Parkman, — improbable as it is, — yet if Dr. Webster, by some means and instrumentalities to us unknown, did beguile and entice him back to the College, and there obtain those notes, and did deprive him of life, then, Gentlemen of the Jury, it is of no importance *when* it was done.

But where was Dr. Webster himself that Friday afternoon? Where did he dine that day? Did the counsel explain that? Did his proofs explain that? Is the fact which the Government have put in here, disturbed one particle, — shaken from its foundation at all, — that Dr. Webster was at that laboratory, dinnerless and alone, with no lecture to prepare, and at a time when the longest interval occurred between his lectures, — namely, from Friday until Tuesday? And if he did dine anywhere, whether at home or abroad, would he not have shown it? He was arrested within a week. He had sagacious, acute, and intelligent friends about him; he lacked no legal counsel, no anxious friendship, to seize upon such a vital fact as this, and prove it before you. And if he was locked up in that laboratory all that afternoon, whether he enticed Dr. Parkman back there and slew him at four o'clock instead of two o'clock, what is the difference? And thus, all this testimony about the Parkman *alibi*, as it is called, becomes entirely immaterial to the real issue before you.

But I now pass to the consideration of the identity of the remains. How is this proved, Gentlemen of the Jury? It is put to you, by the defence, as still an open question. How is it proved? We have heard something said about the negative argument. I think it will be apparent, upon a little consideration and analysis of the testimony, that there is nothing negative in the argument which I shall draw from the facts proved here, independent of the teeth.

In the first place, the evidence shows, beyond all question, that the parts of a human body found in that furnace and in that vault and in that tea-chest constituted parts of only one human body. This fact is placed beyond all doubt by that marvellous science and skill so beautifully exhibited to you in the details of the testimony of Dr. Wyman, and by the testimony of those other intelligent physicians who made the examination of the body; — it is proved by the united and concurrent testimony of all of them. In addition to this, it is evident, from all the testimony, that these constituted

the parts of a body which was not a subject for dissection. The testimony of Dr. Ainsworth is, that there was no subject that belonged to the College, missing. He keeps a correct record, and all his subjects were accounted for. It has not been suggested that any other person was killed or missing, except Dr. Parkman. And now take these coincident facts: — that here were the mutilated remains of a human body; that no subject was missing from the dissecting-room; that no person had died, by violence or otherwise, whose remains were missing; no living person missing, except Dr. Parkman; and that these remains are found to bear every point of resemblance, and not a single point of dissimilarity, in form, age, and size, and in the fact that he wore false teeth, to the person of Dr. Parkman; — and I ask you, — if anything can rest on human probabilities, — what is the value and strength of this argument? Is it negative?

Take the entire community, — ay, the community of the entire country and the world, — and go through it, and select from it the man who most resembled Dr. George Parkman: let him be slain; let his remains be mutilated precisely as these were mutilated, preserving no more than were preserved of these; — and the chances are as millions to one, — ay, you cannot calculate the chances, — that, upon the remains of that person, or such portions of them as correspond to those found here, although there might be entire resemblance in most particulars, there still would be, to the searching eye of friendship and of long acquaintanceship, some one little point of dissimilarity: — and one such little point would be just as fatal as if there were no resemblance at all. Yet here you find, from the testimony of the physicians, from the testimony of Mr. Shaw, of Dr. Strong, and others who examined them and drew their conclusions at the time, that they saw no reason to doubt their being Dr. Parkman's remains, before Dr. Keep had ever examined those teeth, or it was known that Dr. Keep could identify them. I ask you whether their opinions were not justified by the facts? I do not say that upon this evidence alone you would have been called upon to pronounce upon this question of identity; but I ask you to consider whether all these facts do not reasonably justify the conclusion, to which his friends arrived, that those were the mortal remains of Dr. Parkman?

Consider for a moment. Here is a portion of a human body, which has great peculiarities. There is no doubt about that. Mr. Shaw testifies to it. Dr. Strong testifies to it. There was the peculiar color, profusion, and length of

hair; the peculiar shape of the jaw, with the fact of wearing false teeth; and the exact similarity in the height of the body. What are the chances, that, among all these points of resemblance, there should not be one single point of difference, if they were the remains of another person? These resemblances may be said to be slight. Well, if they are, they are many; and a thousand threads, all running in one direction, and not one running counter to them, though they are as slight as the finest filaments of gossamer ever woven in the morning sunlight, yet by their very number and direction may be strong enough to draw us irresistibly to the conclusion to which they lead. Why, Gentlemen, of what is the cable made, that holds the ship to her moorings? Its separate threads may be snapped by an infant's hands; united, they resist the force of the tempest.

I come now to the positive, the demonstrative testimony; upon which I undertake to say, that you, as intelligent men, must be as well convinced, as if we had brought in here the entire mortal body of the deceased. I mean the testimony of Drs. Keep, Noble, and Wyman. And I approach it reverently, when I consider the circumstances under which this identification was made; when I remember the long and patient labor of that conscientious man, Dr. Keep, upon the manufacture of a set of teeth for Dr. Parkman, that he might be present at the opening of that College of which he had been the munificent benefactor; — that it should happen, in the order of Providence, that in that very building where he met his fate, that very set of teeth should have been found to identify his remains, and thus bring his murderer to justice, and vindicate the law!

I do approach it reverently. I seem to see in it the guiding hand of Almighty God, leading us to the discovery of the truth. And when that witness stood upon that stand, and gave us the history of his patient labors over those blocks of teeth, the counsel for the prisoner must have felt, and did feel, that the great foundation of the defence, upon which they had hoped to build up their theory, was crumbling out, sand by sand, and stone by stone, from beneath them.

Consider, too, that these witnesses were no volunteers to fasten upon the prisoner a charge so awful and revolting. No! Dr. Keep's own emotion indicated with what reluctance he had come to that sad conviction. Why, Gentlemen? Why? Not simply that these were the remains of his friend, but that they were the remains of the friend of Dr. Webster, who was also his friend. Dr. Webster had been his

teacher; and he saw how this discovery tended to fasten this act upon him. He saw what an immense stride was then made towards the settlement of this great question of identity against its final submission to the consideration of a jury.

The conviction pressed itself upon him, that this prisoner, whom he would save if he could, must be connected with the mutilated remains of one who had been not only the benefactor of the institution in which he was a professor, but, as these papers here have shown you, the benefactor, too, of the prisoner; of him

> "Who should against his murderer shut the door,
> Not bear the knife himself."

Dr. Keep felt as any man of ordinary sensibility would feel, at coming to such a conclusion as the truth required him to state to us; — that he knew those were the teeth of Dr. Parkman, as well as if he had them entire in his hand that day. To show that he could justly state this with confidence, take the testimony of the experts we put upon the stand, who testified so positively to the means of identification. If you believe them, what becomes of the miserable pretext sought to be supported by the testimony of Dr. Morton, that such blocks of teeth could not be identified? They *could be* recognized, according to the beautiful illustrations of the two witnesses, Drs. Harwood and Tucker, "as well as the sculptor would know the product of his chisel;" or "the painter, who had studied a face for a week, and painted it upon the canvas, could know the portrait as his own work, wherever he might see it."

If anything more were needed, it is found in the conformity of the jaw of Dr. Parkman to the mould which Dr. Keep had preserved; which mould corresponded with all the peculiarities of the jaw of Dr. Parkman, picked out from the smouldering ashes, and — by that true lover of science, and uncompromising seeker for the truth, Dr. Wyman, — put together and produced here before us. If he had produced here Dr. Parkman's right hand with a scar upon it, which every one of his friends had known, the evidence of identity could not be more conclusive. When we consider that here is a man in this culprit's dock, — himself a devotee of science, — that he has enjoyed all the advantages of intellectual association and culture, — the thought that he could so debase and betray his high vocation and mission, as to slay — either in anger or in cold blood, whichever it may be — his benefactor and friend, almost sickens us; we feel that there is no shield for

any of us against the commission of great crimes; that culture, science, and all the ennobling and purifying influences of education, are utterly lost upon us. To find the powers they confer subjected to such base uses as that chemist's laboratory has witnessed, prompts us to exclaim,

> " O star-eyed Science ! hast thou wandered there,
> To waft us back the tidings of despair ? "

But we recover and are refreshed by reflecting upon the other great fact which this case discloses, that, although science had been debased to the purpose of destroying those remains, yet this honored handmaid of wisdom and virtue, in her true vocation, in her nobler scope, sifted and penetrated those smouldering ashes, and evoked from them the materials with which she has reconstructed almost the entire body which a perverted science had vainly attempted to destroy.

I cannot pass from this part of the case, Gentlemen, without expressing a feeling which has often arisen in my breast during the solemnities of this trial, — of the respect and honor that are due to that noble profession whose ministers have rendered this great service to the cause of justice and truth. When we have welcomed them to our bedsides, amid our trials and sufferings, we have loved and honored them; but when we meet them here, and see them taking the stand, as they do, most reluctantly, against one of their own brotherhood, — forgetting, or rather trampling under foot all those considerations which arise from caste and class, and giving themselves unreservedly to the truth, let it strike where it may, let it fall where it will, — they challenge, and are worthy of, the highest honor; and they have my humble reverence. One of their number, whom we hoped to have seen here, and whose aid I had occasion to seek in another recent capital trial, in which his testimony showed how much he would have added to the impressiveness of this, has passed away from us since these investigations commenced; — a man who honored the community in which he lived, who honored the profession to which he belonged, and who, for the cause of science, has been removed from us too soon; — I refer to the late Dr. Martin Gay, whose testimony to the scene down in yonder prison, and over at that Medical College, would have been as valuable to us, as his scientific testimony would have been upon this question of the identification of the remains.

I pass to the consideration of another point. I assume as a matter settled beyond all question, that there were found in

Dr. Webster's laboratory, in the vault, the tea-chest, and the furnace, the remains of Dr. Parkman. The circumstances under which those remains were found, negative, without the aid of argument, the two propositions which have been presented by the learned counsel: one, that he died by his own impious hand, — that he committed suicide; the other, that he died by the visitation of the Almighty, — a natural death.

I do not feel called upon to argue suppositions like these. Why, Gentlemen, to have died a natural death, and his body to be found thus mutilated! — for what conceivable purpose? Or is it possible that he committed suicide, and some person, in mere sport, had hacked those remains, and burned that head? Preposterous! Absurd! Could his death have been innocent, with such a disposition of his body? No, Gentlemen; that speaks louder than any language of mine can speak, that there was crime, as there was concealment, connected with these remains. These suppositions were not pressed by the other side; they were thrown out as suggestions, — consistent, or inconsistent, as they might be with other propositions; and the inconsistencies of some of these I shall advert to presently. But they were not dwelt upon, and counsel could not have attached any serious importance to them. No, Gentlemen. The circumstances under which those remains were found, bring us conclusively to the conviction, that crime was connected with the destruction of Dr. Parkman's life, by whomsoever it was done.

I come now, Gentlemen of the Jury, to examine the hypotheses which have been set up on behalf of this defendant. I shall first ask you to consider whether any one of them, taken alone, independent of the rest, is a reasonable hypothesis, such as the law contemplates, to negative the hypothesis which the Government asserts and undertakes to maintain upon circumstantial evidence. I shall then briefly ask you to consider how consistent with each other these hypotheses are.

I think I cannot be mistaken, in supposing that the consumption of your time upon this latter subject will be superfluous. For, although the argument which embraced those theories and propositions was addressed to you in the most impressive language and manner, and although each independent and distinct proposition came from my learned friend with a force and fervency which I could not hope to rival, if I had the ambition to do so, still, I think, as fair-minded men, men of fair intelligence, you could not but have been struck with the manifest contradictions and inconsistencies into which his

case had betrayed him. And yet there was no help for it. He did all that mortal man could do. He had the truth of the case against him. And I do not know that an argument could have been framed that would have been more satisfactory — certainly none more able and impressive — than he addressed to you out of the materials at his command.

But what were the propositions? First, that Dr. Webster admitted, — what we had proved, — that Dr. Parkman went to that College, at or about half-past one o'clock; that he paid Dr. Parkman the money, which we say the proof denies; and that Dr. Parkman then departed, and he saw him no more. Upon these the counsel undertake to construct their hypotheses. And what are they?

In the first and most important place, they disclaim, now that our proof is in and uncontrollable, all imputation upon Mr. Littlefield as having been the author of Dr. Parkman's death. If this had not been done in express words, you, as a jury, would have been bound to put your impress upon that hypothetical statement of what Mr. Littlefield did, or might have done. That statement was made, as the counsel told you, in the fearless discharge of his duty. It may be that it was in the discharge of a duty that he put Mr. Littlefield, an honest man, upon his trial here; yet he did not dare to make the accusation against him which his client had had the hardihood to make before he came here.

The counsel knew, that, where we had corroborated Mr. Littlefield, he would stand unshaken, and that we had furnished them with the means of contradicting him if his statements were untrue; and they did not contradict him in a single syllable. I mean to present Mr. Littlefield just as he is. I mean that justice shall be done to him, if justice is not done to him who libelled him. But I now speak of this as a part of the counsel's allegations, that he disclaimed all imputation upon Mr. Littlefield as having been the perpetrator of this crime.

The counsel then argues, — Supposing this to be the body of Dr. Parkman, it is not proved he died by violence; he might have died a natural death, and been stripped and robbed, and his body carried into the laboratory of Dr. Webster without his knowledge.

I have already had occasion to say to you, we are not here to discuss possibilities. It is no part of your duty, though it may be a part of the duty of the counsel. He could suggest nothing else. Why, Gentlemen of the Jury, he might, with

almost equal plausibility, say that Dr. Holmes, the accomplished physician and professor, who entwines with his scientific laurels the wreath of the muses, — whose fame is precious to us all, — who is known and honored and beloved everywhere, — that Dr. Holmes might have killed Dr. Parkman, when he was coming down out of his lecture-room. But we are not dealing with possibilities.

Having dismissed Mr. Littlefield, and the other possibilities, the suggestion is, that the deed was committed by somebody out of the College, and the remains carried there. And that really seemed to be the proposition upon which the counsel rested. You see the inconsistency of his other propositions: if Dr. Parkman went there at half-past one o'clock, and then went away, as Dr. Webster said he did, and thence to Holland's store and bought his groceries, and then back again to the College, and was there waylaid and murdered, then all the testimony which they put in afterwards, of the afternoon *alibi*, goes for nothing. He never was seen out of the building, if that is true. If he was killed elsewhere and carried there, it involves another absurdity. The idea is, that it was done by some robber or marauder who waylaid him, and, after he had slain him, carried his remains to that College. For what? Why, the first suggestion is, to have them destroyed, or for concealment, until the excitement arising out of his disappearance should subside; the other is, in order to get the reward which was offered for the discovery of the remains. Then it becomes quite material to consider what is meant by the suggestion that the criminal got in there that night, and by that mysterious unbolting of the door. Ay, and when was that? Friday night! — that was the night of the day of the disappearance. The robber and murderer was expeditious, upon the hypothesis that the deceased separated from Dr. Webster and was wandering about the city deranged that afternoon, and yet that his body was concealed in the College that night!

But how does this consist with the theory that he was killed elsewhere, and that it was not until a search was made and a reward offered, and when slander began to breathe upon Professor Webster's name and connect him with the disappearance, that this marauder and murderer, whoever he was, went and deposited the remains in Dr. Webster's room, and there proceeded to dissect and destroy them? What is the proposition? Does it satisfy your minds, Gentlemen? Does it raise a reasonable doubt? Remember that, whoever this unknown person was, he was a tolerably competent dissector

and anatomist; for the manner in which that body was cut up, in the expressive language of Dr. Holmes, showed it to have been done by a competent person. — "There was no botching about the business." No, Gentlemen; he left

"No rubs nor botches in the work."

So that, whoever he was, he was a tolerably skilful anatomist.

More than that, — he was something of a chemist. Do you remember the testimony of Dr. Charles T. Jackson, confirmed by one of the other medical witnesses? It was he who, with Mr. Crossley and Dr. Gay, made the examination. Their testimony, independent of that of Dr. Gay, is, that they took portions of the muscle of the thorax, and found that strong alkalies had been applied to it, which is known by chemists to be a most efficient mode of destroying flesh. "But, after slander had begun to whisper against the good name of Dr. Webster!" — there were rumors, were there? there were slanders, were there? — which began to blow upon his good name! Gentlemen, I ask you to consider, as men having faith in Providence, whether it is likely that unfounded suspicions of having committed an act like this could attach to such a man as Dr. Webster.

More, Gentlemen! — and this answers a very considerable portion of the theory advanced by the counsel; — I ask you if you believe that it would be possible, in a community like this, distinguished for its intelligence and its humanity, that such a man as Dr. Webster could remain, not under suspicion only, but under an accusation like this, for four months together, and no hope-giving trace or indication of his innocence be discovered? Why, Gentlemen, what interests have been involved in making his innocence to appear, if that were a possible thing? What anxiety and solicitude have been felt on that score by all the friends of good order and of education, as well as by the friends of that beloved University, — the cherished child of our Pilgrim Fathers? If one of the officers of that University were charged with crime, he would have had, (until proof of his guilt compelled conviction,) — as this prisoner has had, — not only the sympathy, but the repelling disbelief of the accusation of every man in the community. Do you suppose that suspicion cast upon such a man could ripen into accusation, and that accusation into an indictment, and that indictment into trial, in a community like this, and the world sit down quietly and let it all go on, if he were innocent?

But it is further urged by the counsel, that, before suspicion had begun to be aroused, even as early as the Friday night of Dr. Parkman's disappearance, the person who carried the remains there entered into that building in some incomprehensible way, and hence the door was found unbolted in the morning. You remember how impressively the counsel alluded to that unknown person, who might thus and then have effected his entrance into the building. This, of course, is utterly subversive of the other theory, if it has any foundation in the proof. But I think there is another suggestion worthy of your attention. On that Friday night, after one o'clock in the morning, and up to one o'clock of the next day, who testifies of the whereabout of Dr. Webster? Who, beside him, had a key to that door, if we except Dr. Leigh? The facility with which Dr. Webster flitted between the Medical College and Cambridge has been made apparent to you by the testimony of his own witnesses. I think, too, that the unbolted door had some connection with these remains; but not that it bears upon any other person than the prisoner. I cannot imagine that there was some murderer outside who carried these remains there, "because suspicion had begun to breathe upon Dr. Webster." That would imply that this body had been put there at a very late period in the week.

But in point of fact, Gentlemen, until these remains were found on the premises, and until that startling discovery was communicated to the police, there was no evidence of a general suspicion against the prisoner; — none whatever, until Friday, the day of his arrest. There is no doubt, that, with regard to the College, public sentiment had been decided before that date. But let me say, that the public are not prompt to entertain an unfounded charge of a great crime against a man who is set so far beyond the reach of suspicion as to make it require proof upon proof to connect him with the transaction. But what foundation is there for any such theory as this? There has appeared nothing yet — nothing whatever — to point to or implicate any such third person. And upon what are you to try this cause, Gentlemen? "Hearken to your *Evidence*," was the admonition with which you commenced your patient and protracted labors in this trial; and you are to go by nothing more. I shall consider how much has been added to it by the defence, by-and-by.

Four months have now elapsed, and neither time, place, mode of death, nor any other circumstance, has directed attention to any third person; nobody else is suspected. It is idle, it is absurd, to suppose, in a state of evidence like

this, that any one else committed the act which all the proof tends to fix upon this prisoner.

There is a further suggestion, — and I will answer it now, — that the remains were carried to the Medical College with a view to get the reward. Did ever a reasonable man listen to, or did ever wise men, who were uttering their own convictions —

[*Mr. Merrick* here interposes, and holds a brief conference with the Attorney General.]

Mr. Clifford. I understand, may it please Your Honors and Gentlemen, from my learned friend, — to whose argument, to whose efforts, I am certainly disposed to do entire justice, — that he used the matter of the reward in connection only with this consideration : — that it was remarkable that the offering of the reward was coincident with Mr. Littlefield's commencing the search for these remains. The fact is not so in regard to Mr. Littlefield ; but, if it were so, what an absurdity it would be to connect the two things together in respect to anybody! That a person should deposit in the College, and afterwards find there, — what? — not that portion which has been satisfactorily identified, but parts which could not be identified! How absurd that he should have destroyed all those parts of the body by which identity is ordinarily proved, — the head, hands, arms, and feet, — and then undertake to find the remains which were concealed in the vault for the purpose of getting the reward ; when the great question would be, in the first instance, whether they were the remains of Dr. Parkman at all!

You will remember, that all that Mr. Littlefield found were the portions deposited in the privy-vault. He did not find the portions in the tea-chest, or the bones and teeth in the furnace ; and he gave no intimations by which they could be found. He found simply the pelvis, the right thigh, and left leg. And how did he find them? I shall consider that in a moment. The proposition, then, that they were put there for the purpose of obtaining a reward, is preposterous.

Then take the other proposition. Could any man in his senses have undertaken to use Dr. Webster's laboratory for the purpose of destroying those remains? — in the day-time, remember, when he was there, as we show, not by Mr. Littlefield alone, but, as they show, negatively, by their own evidence? For it is a most remarkable and significant fact, that the three daughters of Dr. Webster, who came here to testify in the defence, have, by their own testimony, in a most remarkable degree, confirmed and corroborated Mr. Littlefield.

They show their father away from home at the very time Mr. Littlefield places him at the College, and Mr. Littlefield shows him to be absent from the College at the very time they place him at home. There is no conflict, but a perfect harmony, between the testimony of these witnesses.

Now, the absurdity of any person doing such a piece of work as this, in that laboratory, without the knowledge of Dr. Webster, is manifest. Suppose he had secured his opportunities when Dr. Webster was out. There was the assay-furnace, in which, upon the evidence, a fire had never been kindled before. Do you think that there could have been a fire kindled and left burning in that furnace, without Dr. Webster's attention being attracted to it? For what purpose would any other person than the defendant do such a thing? Who would be so fatuitously presumptuous as to attempt to fasten upon a man in Dr. Webster's position an accusation like this, and by such means as these?

Now, Gentlemen, I intend to state to you two or three propositions upon this subject, which, I think, are clearly raised and borne out by the evidence in the case.

If Dr. Parkman had been killed in that College, and his body never carried out, but subsequently conveyed into Dr. Webster's laboratory for concealment, or for the purpose of being consumed, then it is evident that either Dr. Webster or Mr. Littlefield must have known it. I think that we cannot escape from that alternative. One conjecture of the defence is, that some assassin might have lurked in the entry, — a little space of eight feet wide, — and, as he came out of Dr. Webster's room, waylaid and slew him; and that he carried the body either to Dr. Webster's laboratory, and ran the risk of being detected by him, or into Littlefield's apartments, or some other portion of the building, encountering an equal risk of being detected by him. The idea of an assassin lying in wait, with a hundred students all around him, and with the janitor near, and the front door wide open to the street, is as absurd as for a man to lie in wait in the Merchants' Exchange, at mid-day, with the intention of committing a secret homicide.

Then we come to the next hypothesis. Was Dr. Parkman killed outside of the College, and his body brought into the apartments of Dr. Webster? If so, it must have been brought there for one of three purposes: — for concealment; to be consumed and destroyed; or to fix the charge of murdering him upon Dr. Webster. The last I have already considered. With regard to the first, *concealment*, it is obvious that it

could not be accomplished, because Webster or Littlefield must know it. The idea of going into the prisoner's laboratory, to burn a body in the furnace, and to conceal it from him, is as absurd as it would be to come into this crowded court-room, and undertake to do it secretly here.

Was this body to be *consumed and destroyed?* All the evidence shows that this could not be done without Dr. Webster's knowledge. Drawing off the water, burning up the fire-kindlings, so that only a small quantity was left, packing his knife in the tea-chest, using up his tan, spilling his nitrate of copper upon the stairs, penetrating into his private room to get the twine, — (and the fact of that twine being kept in Dr. Webster's private room, my learned friend found it convenient not to remember,) — the grapplings and twine being all together in that private room, in a drawer, — now, I ask you, if any stranger could have done this, and Dr. Webster not have known it? I put it even upon a possible hypothesis. I anticipate your answer.

The idea of fastening suspicion upon Dr. Webster; — what is that? It is not shown to you that he had an enemy in the world; it is impossible to imagine that any man should have had the temerity to attempt to fasten the charge of murder falsely upon such a man. And yet, if that had been undertaken by anybody, what would have been the natural course? Why, he would have taken the dead body there, and left it in its unmutilated state. Found in that condition, it might have answered the purpose. But what was the probability of its being found? Suppose this hypothesis to be true. Then the man who killed Dr. Parkman outside the College, in order to fix the charge on Dr. Webster, and for the purpose of getting the reward, did nothing to discover it! It was Mr. Littlefield who found those parts under the vault; Officer Fuller, those in the tea-chest; and Coroner Pratt or Marshal Tukey, the bones in the furnace. And if the hypothesis is well founded, this unknown, *possible* person took the most incompatible modes of carrying out his intention, and adopted the most efficient means to defeat its fulfilment!

I am addressing reasonable men. My learned friend, pressed as he was by the strength of the circumstances, was driven into these inconsistent propositions, absurd and ridiculous as they are; and he had the skill to present them in such a manner as to give them for the moment an air of plausibility. My duty is to call you back to the testimony.

There are, in this case, two or three other great, overshadowing facts, Gentlemen, which, long ere this, would have

sent any common culprit a doomed convict from the prisoner's dock. But, before adverting to them, let us consider the other proposition, which has not in terms been made, but which has been indirectly attempted to be maintained; — I mean, the proposition that Mr. Littlefield is not to be believed. And why? Because, as the counsel was compelled to say, if he was believed, it did make this case a strong one against the defendant. Gentlemen of the Jury, why is he not to be believed? By what rule of evidence, by what rule of law, by what rule of justice, by what rule of right, are you sitting here as his fellow-citizens, and under the responsibility of your oaths as jurors, to say that Mr. Littlefield has not entitled himself to your credence?

There are various modes of impeaching a witness. One is, by attacking his general reputation for veracity. That gives an opportunity to sustain his character by counter testimony. If the counsel here had undertaken that mode of attack, they knew very well, that, "like the unskilful engineer," they would have been "hoisted by their own petard." They knew that we could present ample evidence, both to corroborate his statements, and to sustain his character for truth and veracity. Another mode is, to impeach him by showing the conflict of his testimony with that of other credible witnesses. No such conflict is found here, — corroboration and confirmation rather. A third mode is, to show the inconsistencies and discrepancies in his own testimony. This has been attempted, — with what fairness or success we shall see, and you are to judge.

I have another consideration to present, which, I think, is demanded by a sense of justice to an humble and honest man. To him, and to his wife and children, his reputation is as dear as that of a college-professor is to him, and, in the eye of the law, is entitled to equal consideration. When I remember the load of obloquy, which, coming originally from the defendant's lips, has been borne by Mr. Littlefield; — the imputations which have been heaped upon him, so that, during the rest of his life, abroad or at home, his name must ever be associated with this terrible tragedy; — when I remember that those children of his must hear it said, that Dr. Webster and Dr. Webster's friends, and the reckless and thoughtless who sympathized with him at the risk of injustice to others, imputed to their father, if not a murder, a most foul and unrighteous conspiracy; — when I remember, also, that he has been here upon this stand an entire day upon his examination, and upon another day has been taken up in

cross-examination and subjected to the severest scrutiny and sifting which he could undergo at the hands of those who rank with the ablest cross-examining counsel in Massachusetts; when, if he were untrue, and if he were open to contradiction, his falsehood must have been exposed; — and when I reflect that he has gone bravely through it all, — that he has come out of the fiery furnace of an ordeal like this, without a trace of fire upon the garment of truth which he has worn; — I put it to you, whether he shall longer continue to bear the imputation cast upon him by this prisoner, and which, with a less directness of charge, his counsel have now undertaken to impress upon you and upon the community! I challenge your sense of justice, whether all question of the truthfulness and integrity of Mr. Littlefield shall not be put to rest forever!

Gentlemen, are we in a Christian court-room? If Mr. Littlefield had contradicted himself, or been contradicted by others, if he had been proved to have done anything which opened him to such an attack, I should not, most certainly, stand here to defend him. But he is charged with having told you an improbable story! We will see if he has done so, in a moment. My present purpose is to show that injustice is done to the man. If that is the case, there is no defence for Dr. Webster. For it is certain, that, these remains being there, it must have been known to Littlefield or Webster. Indeed, it is impossible to believe that it could have been known to Littlefield, without having been known to Webster.

I do not put Mr. Littlefield upon this stand as a man of culture, — of nice, delicate moral sense; but I put him here as an honest man, who fills reputably his position in life; — a useful, though an humble one; — and who in that position commands the confidence of those who know him best, and are best able to judge of him. During all this period, when the keen, sharp eyes of the police have been upon him; when, as Constable Clapp and Mr. Kingsley tell you, every nook and corner and crevice, — every pocket, every place on his premises, — has been searched; when they have had their eyes upon himself, personally, scrutinizing him every moment; — that nothing should have been discovered, and (what is of more importance) that he should have been retained in his place, ever since, by those very professors whose associate had been taken off to the cells of a prison upon his accusation, — entitles him, I say, to some expression from the whole community, of its sense of justice, if there is any sense of justice left in it; and it shall be no fault of mine, if

he does not obtain it. So far as my humble voice can bear witness to my convictions of his truth, I should feel that I was false to every sentiment of justice, to every principle of duty, if I did not give utterance to these convictions.

Where, then, do we show Mr. Littlefield to have been? And where does the defence show him to have been? For, if he was not where the Government proves him to have been, they could have called various persons to contradict him. They could have called, at least, Drs. Holmes, Jackson, and Hanaford, and Messrs. Harlow, Thompson, and Grant, to show whether he spoke the truth: but we could not. I should have added, also, — the members of the Suffolk Lodge, — where he went on the Tuesday night, after the conversation with Dr. Webster about freemasonry. His statements of his whereabouts during the entire week, made as unreservedly and minutely as the counsel could desire, have all been open to contradiction, if they were untrue. But there has not been a syllable of conflict. A futile attempt, indeed, was made to show, by the old man, Mr. Green, that Mr. Littlefield had said he was present when the conversation took place with Dr. Parkman. But even he concludes, upon the whole conversation, that he was mistaken in his first impression; and we have put upon the stand the very person to whom the statement was alleged to have been made, Mr. Todd, and he has negatived conclusively the idea of his having said any such thing.

Mr. Littlefield standing here thus entirely uncontradicted, let us see what his conduct was in other respects: — And I shall go over it more cursorily than I otherwise should, if I did not rely upon this proposition, which you will assent to, that, in all that he has said, he has been open to contradiction, if his testimony were susceptible of contradiction.

Whatever there is in his conduct that has been the subject of comment, that looks unreasonable, in my view is explained by the fact of his having conceived a suspicion of Dr. Webster so shortly after the disappearance of Dr. Parkman as he states that he did. Proceeding, then, under the light of this most important theory, to an examination of his conduct and his testimony, the fallacy of the learned counsel's argument will, I think, be apparent.

Prior, however, to the adoption of that suspicion, counsel find fault with some of his proceedings. "Extraordinary conduct," he exclaims, "that Littlefield should have gone to Webster's room Friday night, after coming home late in the evening!" He took that fact, without considering that he

went, at the same time, according to his custom, round into the dissecting-room and the entries, to fasten up the building. Why should he not try Webster's rooms also?

As to other objections to his conduct after Sunday, — the receiving the turkey, the heat of the fire felt on his face as he passed through the entry, &c.; — are these suspicious and extraordinary actions? The fallacy of the argument is, that the counsel proceeds upon the assumption that Mr. Littlefield's *suspicion*, on Sunday night, was *a settled conviction*.

Mr. Littlefield has not the command of language. When he says he had a suspicion of Dr. Webster, what is it? Consider the relations of the two men. Here was the subordinate conceiving, on grounds which I think you will justify, suspicions against his superior, upon whom he was in some degree dependent for his daily bread. These were checked by his wife. "For mercy's sake," says she, with a wife's natural solicitude, "do n't ever say or think of such a thing again." And then, the allusion to the possibility of its coming to the Professor's ears! But he could not help thinking of it. Originally, when Dr. Webster told him, that Sunday night, with downcast eyes, that he had paid Dr. Parkman, and that Dr. Parkman grabbed the money and ran off without counting it, — when he found, in connection with this, that Dr. Webster pursued the unusual course of keeping his doors closed against him, — why should he not entertain the suspicion? When Dr. Webster went on through the week in the same way, — when he was learning that public sentiment was settling down decisively upon the idea that Dr. Parkman's remains would be found in that College, and nowhere else, — when it came to the point that that College might have been the scene of a riot and a mob, — then he commenced a search in the only place unexamined, acting upon that honest suspicion, early conceived, honestly entertained, but still cautiously acted upon; — cautiously acted upon, because, if it should turn out to be erroneous, how could he justify himself for having entertained it? Suppose he had undertaken to break through the door of that privy; what would Dr. Webster have done, if he had caught him there, and his suspicion had turned out to be unfounded? It is not a conviction that he is to find anything, not even an expectation, — perhaps not so much as a probability, — but a *suspicion* arising out of Dr. Webster's conduct.

Was Mr. Littlefield the only person who suspected Dr. Webster? Were there not suspicions on the part of others who had interviews with him? What was Mr. Samuel Park-

man Blake's feeling, when he came from that interview? And yet Mr. Littlefield is denounced for having entertained a suspicion which he did not consistently act upon! I maintain that he did act upon it consistently, when you consider the relations between him and the Professor; and that he should have gone, in the manner he did, to Dr. Jackson and Dr. Bigelow, shows the confidence of his suspicion at that time. That he should have created no disturbance, and have made a very cautious, hurried, and imperfect examination when he entered the laboratory on Wednesday, is perfectly natural.

But it is objected against him by the counsel, that he took the turkey. Why should he refuse it? Should he refuse the only present ever given him by Dr. Webster, and thus tell him his suspicions? It do n't appear that he ate it. But it does appear that he did not dine at home on Thanksgiving-day; so that all the pathos and poetry of my learned friend, about his eating that consecrated meal received from a murderer, is entirely lost.

Then the warmth of the fire felt on the face! Why should he not feel it? As I understand it, when there is an intense heat in that furnace, the wall would be heated after the fire had gone down; and the heat of the wall need not have been very great, to be perceived by a person passing through that narrow passage. Is there anything in that objection? At all events, Mr. Littlefield swears to it, and he is an unimpeached witness, and — I feel authorized to say of him, as the counsel did of another witness, — an unimpeachable one.

Then the search made in the laboratory! "Why did n't he break into the privy-door?" I reply, because he had alluded to it once, already, in the presence of the police, and *they* did not choose even *to ask* Dr. Webster to open it. He was not going to expose himself to the maledictions of Dr. Webster, if he should find nothing there. But, when the cloud thickens round the College, he communicates his suspicions to the professors, and one of them tells him to go through the wall before he sleeps. Why should not objections as well be made to the conduct of my friend, Dr. Bigelow, here [who sat beside the Attorney General], or to Dr. Jackson? Why did n't *they* say, Go into that privy, and put a lantern down, and discover what you can? You are not to assume that something decisive had already been discovered about Dr. Webster, and that Littlefield knew that the remains were there; or that he suspected that they were there,

to the degree that the counsel seems to believe. He held the suspicion cautiously, as a man in his situation naturally would, and acted accordingly. Then there was secrecy pledged on the part of Dr. Jackson. Of course, *secrecy!* Secrecy all through, until something was discovered! And when those suspicions ripened into certainty, as they did when the remains were found, then, if Mr. Littlefield were not an honest man and an honest witness, — if he had a purpose to implicate Dr. Webster, *why did not he point out the tea-chest? why did not he point out the bones?* Did he do either?

Now, Gentlemen, if there is anything which, in administering the law, lies at the foundation of all justice, it is that, if a man is to be put upon his trial, he shall first be accused. And that is what my friends on the other side have been insisting upon. They say that we have not charged Dr. Webster with sufficient precision in our indictment. They did not undertake to charge Littlefield at all; and yet they undertake to try him; and it is the breath of an advocate alone which is to fix and fasten infamy upon an honest, though an humble man. Gentlemen, is that justice? — Christian justice? Let them come out! Let this prisoner have come out, and through his friends and counsel, in the open face of day, have undertaken to fasten this charge upon Mr. Littlefield, and it would have been met, — most successfully, decisively met! Remember, Gentlemen, that, at a critical period in the history of these events, on the night of the arrest and the general visit to the College, this prisoner and this witness have once been together, face to face. Littlefield has confronted Dr. Webster! The dependent has stood up before the superior, — and the superior has been dumb before the dependent!

Remember, further, that according to the testimony of all the witnesses who were at the College as early as the Tuesday of the week prior to the arrest, when significant allusion was made to the privy and the privy-key, that Littlefield, in a natural manner, stands up before the defendant and says, "That is Dr. Webster's private privy. He is the only person who has the key:" and Dr. Webster has nothing to say in denial; but bows his visitors politely out of the door as soon as he can. And when the key was asked for again, on the second more important occasion after the arrest, Friday night, Mr. Littlefield said again, "Dr. Webster keeps that key: — you must ask him for it." What, then, does Dr. Webster reply to Littlefield? To this man, whose accusation

against him is to strip him of name and reputation, perhaps peril life itself, — what does he answer? He is dumb before his accuser, and opens not his mouth.

When he gets to that dimly-lighted laboratory, standing off nine feet, at the nearest, from the body upon whose identity he undertakes to pronounce, what has he to say to Mr. Littlefield? Yet, he does not hesitate, behind Mr. Littlefield's back, to charge him with conspiracy against himself! But before his face, what does he do? What would an innocent man have done, when face to face with the man whom he says he always hated? — although it would seem that he began to manifest some kindly feeling towards him on the Tuesday before, when he made him the first and only present he had ever made, in an intimate intercourse of seven years. When confronted there by him, if an innocent man, would he not have said, "Why, Mr. Littlefield, you have had access to my rooms; you can explain this"? But not a word! — *not a word!* When the two men were together, there was foreshadowed what has since been followed up and made clear to every eye. Littlefield has spoken out everything; Dr. Webster has spoken out nothing. Now, through the breath of his counsel, is this witness to be attacked, before a jury and before the world, as not being entitled to credit and belief? No, Gentlemen! go down into your own hearts, and see what justice you would demand for yourselves, in a case like this; and, what you would demand for yourselves, extend to him! I ask no more.

I should have added another thing that was unmistakable in the conduct of Littlefield, — the demeanor exhibited by him when those remains were found. He and his wife were examined here separately; — apart from each other. What a field was thus opened to the defendant for detecting untruth and inconsistency, if any existed! It was impossible for them to have imagined what questions would be asked them; and, if there had been anything untrue in their answers, would not Mrs. Littlefield have crossed her husband's track, in the rigorous cross-examination to which they were subjected? And yet there is not a particle of conflict. "When he came up," says Mrs. Littlefield, in homely but truthful phrase, "he *bursted* out a-crying." The counsel suggests, that, as Mr. Littlefield was the janitor of that College, he was therefore familiar with subjects of dissection. True, Gentlemen; but even he, familiar as he was with them, when that which had been but first a vague suspicion in his own mind had gradually, through that week, wrought itself into the

minds of others, till he had been compelled through fear of what might happen to the College to go into that vault, — when that suspicion ripened into the certainty that the remains of Dr. Parkman were there, — that a generous patron of the College had been foully murdered, and his eye at length rested upon his mutilated and dishonored body, concealed under its basement, — even he could not choose but weep! Did this expression of feeling proceed from a hardened conspirator, who was seeking in that vault for what he knew he should find?

But what opportunity had Littlefield to be in any way concerned in this matter? He was in Dr. Holmes's lecture-room within five minutes, probably, of the time when Dr. Parkman entered that building.

Chief Justice. — Did he not go into Professor Ware's room?

Attorney General. — Yes, Your Honor. But he went to Dr. Holmes's room before the close of the lecture. He assisted him in what he had to do, after his lecture was finished. He then came down with Dr. Holmes, at a quarter-past two o'clock.

Now, Gentlemen, we cannot ask Dr. Holmes the question, whether that statement is true, because Littlefield having stated it, and being unimpeached, could not be corroborated; but the prisoner's counsel had it in their power to contradict him, if the statement were untrue.

Then Littlefield, according to his own testimony, made his preparations for the fires in the furnaces of the medical lecture-room and the dissecting-room, and also prepared the stove in Dr. Ware's private room; and, at three o'clock, Dr. Bosworth called there, and found him engaged in these accustomed occupations, and in his ordinary dress. Thus we have Littlefield, at five minutes before two, at a quarter-past two, at three o'clock; and then at four o'clock, he was lying down, as we prove by his wife's niece, Miss Buzzell, when Mr. Pettee calls, and testifies that he saw him. Again, between half-past five and six o'clock, he dresses himself and goes to Mr. Grant's dancing academy, and is there that whole evening.

With a single further suggestion I leave this matter. If Mr. Littlefield had anything to do with that body, you will remember that he had access to the dissecting-room vault. His throwing anything down into it would not have excited the suspicions of any person who might be passing through the entry. He also understood the lock upon the lid; and if he had those remains there for any other purpose than for the

gross and incredible purpose which I have already discussed, — of fastening suspicion upon Dr. Webster, — he could and would have deposited them in that vault, beyond all doubt.

The question is asked, Why did not Dr. Webster, supposing him to be the guilty party, deposit the remains in the dissecting-vault? Two satisfactory reasons suggest themselves why he did not. It is very doubtful whether he knew where the key was kept, or whether he could have unlocked it if he did. When you visited the building, Gentlemen, you tried that lock, and ascertained for yourselves how difficult it was to unlock it. The other reason is, that he was exposed, while there, at any moment, to observation from the students, who were passing, day and night, to and from the dissecting-room.

But all these possible alternatives of what he might have done suggest another consideration; and it answers a large portion of the counsel's argument, about the folly of the prisoner, if he was really guilty. When you are tracing the history of a criminal, when you are attempting to mark out the course which he has pursued, you must remember, that, in judging of his actions and in weighing his conduct, your own honest hearts can furnish you with no criterion of comparison. You cannot put yourselves in his position. You cannot comprehend his schemes and projects.

We always hear of the folly of a criminal. It is very rare that a great crime is committed without prompting such remarks as, "that he would not have been fool enough to act so unwisely, so indiscreetly." It is not in the order of Divine Providence, that a man engaged in a criminal enterprise shall retain the full possession of those faculties which were given him to be used in the work and the ways of virtue. And the course he takes may be, to the intelligence of the merest child, the extremest folly, when in his own mind it is the height of adroitness and art. Crime is foolish; it has always been so, from the beginning; it will always be so, until the end. It is as true now as it ever was, that "guilt bedarkens and confounds the mind of man," — that "human will, of God abandoned, in its web of snares strangles its own intent."

One further suggestion, arising out of the proof in this case, may impress your minds, as it has my own. If a man has an object which he wishes to get rid of, the possession of which is fatal to him, or rather the world's knowledge of the possession of which would be fatal to him, what is the most obvious thing that occurs to him, as the instrument and agency of destruction? — Fire! fire! — for that reduces the organized structure to a mass of undistinguishable ashes.

Mr. Foreman, suppose, to-day, a person should intrust to your keeping the simplest thing, with an injunction upon you, that your possession of it must not be known to any human being; informing you that the discovery of it in your possession would be ruinous and fatal, involving your reputation, your liberty, your life. Now, ask yourself, in what manner you would endeavor to dispose of it, so that all trace of your connection with it might be beyond the reach of human discovery. You might have an opportunity to bury it. Still, the fear would arise that some person might exhume it. You must get rid of it. "And yet," you say, "if I leave any trace of it, I am not secure, — I am not safe. If I throw it into the sea, that sea may give it up again; its relics may come up at some future time to confront me; and it may be traced to me. But will it burn? If I can destroy it by fire, I shall be secure."

It is not the possession of the thing, but the terrible consequences that will follow from the world's knowledge of that possession, that renders its destruction so difficult and perplexing to him upon whom those consequences will be visited. A narrow line, marked out upon a level floor, may be confidently traversed by a child, without an inclination to either side. But broaden that pathway ten-fold, and let it stretch across a chasm, and the man of the firmest nerves and the most practised self-command would shrink from crossing it. Who does not shudder at the attempt to

> ——— "O'erwalk a current roaring loud,
> On the unsteadfast footing of a spear"?

And so with this learned Professor! For his intellectual self-discipline makes his no exception to the common lot. When he had that body to dispose of, he had two things to do: one, to destroy the body, and all things pertaining to Dr. Parkman, whether of his remains or his effects; and the second, to avoid and avert suspicion. He was to keep up his natural and customary deportment. He was not to seem embarrassed anywhere. He was not to be caught anywhere, or at any moment, off his guard. If a person spoke to him in relation to Dr. Parkman, he was to be in a condition to meet the subject with calmness and self-possession. He was to maintain that external demeanor which would enable him to go to Professor Treadwell's and sit down and converse upon indifferent topics in his usual manner. And he was to make it appear that he was at Cambridge at times inconsistent with the destruction of that body at the College.

But it may be said, although this was his obvious course of conduct, if he should sufficiently command and control himself, yet that it was not within the compass of his or of any man's power to accomplish it. Gentlemen, you have seen him here, through these two past weeks; you have seen what his deportment has been, during all the solemnity and impressiveness that have marked the progress of this trial; you have seen him when others were affected to tears; — when the judges upon the bench, the counsel at the bar, the witness upon the stand, and the entire audience throughout this hall, were unable altogether to repress their emotion; you have seen him when his own daughters were upon the stand, and even the heart of a public prosecutor was too much moved to subject them to a cross-examination; for one to pass through all these scenes unmoved, as this prisoner has done, whether innocent or guilty, must not he be a psychological phenomenon? Never, since his arrest, has he blenched but once; — never, but when detection, exposure, discovery, yawned before him. Then he drooped and fell prostrate, as innocence never did. That prostration continued through all the horrors of that night of his arrest and the day that followed it. But then again, when re-assured by the visits of his legal friend and adviser, he rose once more to the great conflict and was calm; calm everywhere, at all times, under all circumstances. So long as he had anything to resist, to fight against, this power has been at his command: it failed him, only when fear, — the fear of exposure, detection, — like the sense of guilt, crushed all his manhood out of him. "Take any shape but that," he has been able to say, "and my firm nerves shall never tremble."

I now come to state the evidence which attaches to the prisoner, and shows him to have been connected with the murder of Dr. George Parkman. We have waited for an explanation of this evidence, and we have waited in vain.

Undoubtedly we repel, as by an instinct, the presumption that such a man as Dr. Webster could commit such a crime. That he had a fair external of character and reputation, has been already admitted. The fact that he held a Professorship in Harvard College is evidence enough of this. And it is honorable to us, that we hold education in such respect, that, when an educated man and a man holding a high social position is charged with a crime, our people — not the educated alone, but the humble, the illiterate — repel at once the probability of its truth.

But, Gentlemen, we deceive ourselves if we suppose it im-

possible that one holding such a position as his could have done this thing. The annals of crime forbid us to indulge such a pleasant delusion. We have been too much accustomed to regard crime as native only to the low levels of social life; — as skulking out from its dark hiding-places of squalor, ignorance, and depravity, to inflict its deadly blows upon society. But the history of great crimes of violence shows us that neither intellectual culture, high social position, nor even the refining influences of cultivated domestic life, can prove a shield against strong temptation, acting upon a frivolous and neutral character; — upon a character that has not its anchorage deep and firm in steadfast religious principle. There is a character, thank God! of which there are specimens around us now, which, of itself, would be almost sufficient to countervail any amount of circumstantial proof of its possessor's ever having been seduced into crime. But the proof in this case, which, while it exhibits the purest and best men among us taking the stand to testify to his former reputation, shows also the fraudulent conduct of the prisoner towards Dr. Parkman, and forbids us to class him in that category of men of irreproachable virtue. Does it not, rather, prompt the sad suggestion — "See what a goodly outside falsehood hath"?

This case must go far to correct the popular idea of the incompatibility of crime with education and social position. It must impress us with the great truth, that out of the *heart* of man, not out of his *head*, are the issues of life and all those restraining influences which keep him in the way of virtue. If the influences which come from within are wanting, no matter what his degree of intellectual culture, no matter what the graces and accomplishments of which he is master, no matter what may be his reputation among those who can see only the outside of the man, — when the great trial of temptation comes, — (the temptation it may be to keep from exposure and ruin that very reputation, a fair though a false one,) — he knows not — no one can know — what "he may be left to do."

The work of spiritual dilapidation may have been going on within him, unobserved by the world's eye; and the first indication that the fair outside fabric of his character is not free from crack or blemish, is in its sudden, utter, and irretrievable fall! There never was a maxim so much perverted in its application, as that which has been cited and dwelt upon by the counsel, both in the opening and the close of this case, that "no man becomes suddenly vile." This may

be true; but it does not follow, that the first overt act of guilt is the first step from virtue. It is the first, perhaps, that the world sees; and yet the world's judgment may have long been an erroneous one.

Between such a man as I have described, and the poor outcast, with whose face the prisoner's dock is associated, there are two modes in which the world arrives at its decision and pronounces its judgment. We tried, the other day, in a neighboring county, a man born and bred among us, under the influence of our Christian institutions, for the murder of his wife and two sleeping children. For one, in his condition, insanity was the ready and obvious defence; while, if he had been an educated, gently-nurtured, simulating sinner, the cant of the day would as obviously have suggested the other answer, that the moral evidence outweighs the circumstantial proof: — "Such a crime could not have been committed by such a man."

No, Gentlemen! wherever, and in whatever outward circumstances, you find the *heart* of man, with all its deceitful passions, and, in the strong language of Holy Writ, "its desperate wickedness," there you will find the liableness to and the potentiality of crime; and it is fortunate for society, that it is upon no fine theories, which it may be pleasant but fatal to us to cherish, but upon the legal evidence presented to them, that the duties of jurors are to be discharged.

You are to try this prisoner upon this evidence; and from it, you are to say, as reasonable men, whether this charge against him has not been made out by the Government.

Before considering that evidence, it may be proper for me, as a set-off to some of the cases cited by my friend in his opening of the defence, to present a few historical cases of an opposite character. I have before me a list, from which I will select two or three whose study leads to the precise result to which my recent remarks have tended, and which furnish an answer to those cases and those considerations pressed upon you by the counsel on the other side.

It is now just about one hundred years since, in our mother-country, an accomplished scholar, a lecturer, and a teacher, was arraigned before the highest judicial tribunal of that realm, to answer to the charge of having murdered a man twelve years before, for money. And the evidence of that man's death was the discovery of his bones in a cave where his body had been deposited by the murderer. During an interval of twelve years, that murderer, with the red stains of blood upon his hands, had wielded the pen of a scholar; had

corresponded with the most learned men of Europe; was engaged, at the time of his arrest, in the preparation of an elaborate dictionary, which embraced a knowledge of other languages besides his own. The accomplished scholar, Eugene Aram, who has been the subject of a celebrated work of fiction, of a history stranger than any fiction, was tried, convicted, and executed for that murder, committed twelve years before.

So with a reverend prelate of the Church of England, Dr. Dodd, who was executed during the last century for another crime, at the commission of which by a man of his character and in his position the whole civilized world held up its hands with horror. And yet he confessed it all.

But we need not cross the ocean or the century to obtain such instances. Take the case of Colt, in New York, for the murder of Adams. There was an indebtedness, and the victim was beguiled by an appointment into the place of business of his murderer, and slain for a paltry debt.

The case in New Jersey, of Robinson, — who killed his creditor, Mr. Suydam, and concealed his remains in his cellar, and who by a strange concurrence of circumstances was detected, tried, and convicted, and then confessed and was executed, — is another instance.

Take the case of another educated man, Dr. Coolidge, of Maine. What was there to prompt him, any more than the unhappy prisoner here, to crime?

No, Gentlemen; it is not in any considerations derived from such cases as those cited by the defence, that you are to look for the exculpation of this prisoner, or to allow the weight of this evidence to be impaired in the least degree. Reputation is one thing, character another. A man who could do what it is proved by the most incontestible evidence the prisoner has done, cannot come here and stand before a jury and put himself upon his character, and nothing else, without asking them first to obliterate all moral discriminations, and to surrender to a prejudice the real convictions which the facts must force upon their minds.

Now, Gentlemen, consider the facts which tend to show that Dr. Webster was concerned in the death of Dr. Parkman. I think I have shown hitherto, that Dr. Parkman never left that building after he went into the College; that all the evidence of his having been seen that afternoon is really of no account; that he could not have been slain by any other person; and that he could not especially have been

slain by Mr. Littlefield. And now we come to the consideration of this great question, — Was he slain by the prisoner at the bar?

First, let us consider the relation which Dr. Webster bore to Dr. Parkman. I do not know that I care to have a better description of that than was given to you by my learned friend who closed this defence. He expressed it in connection with the proposition, that, if he did commit the act, it was manslaughter and not murder. He described the relations of the two to each other; and I adopt the description, so far as it shows that Dr. Webster, the debtor, who his creditor believed had done him a fraudulent wrong, was evading, and that Dr. Parkman, the deceived creditor, acting upon that belief, was urging, the payment of his debt. There is no difficulty in understanding their relations, when you take into account the fact that Dr. Webster had promised Dr. Parkman, from month to month, and from week to week, and from day to day, up to the time of that fatal Friday, that he should have his money from the proceeds of the sale of the lecture-tickets. Add to this, that all the proceeds of those tickets were appropriated to other objects; that he could not pay him from them; that Dr. Parkman held a mortgage on his household furniture; that, on the 9th of November, two days after the lectures commenced, he called upon Dr. Webster personally at the Medical College; that, on the 12th and 14th, he called on the collector, Mr. Pettee; that, on Monday the 19th, he called on Dr. Webster again (an important fact ignored by Dr. Webster); that afterwards Dr. Webster sent a note to him, which the counsel regretted could not be here (I join in that regret; every possible search has been made for it; he doubtless had it in his pocket when he was murdered); that that note is followed up by Dr. Parkman's visit to Cambridge on Thursday; and then the toll-gatherer tells you that he came down to the bridge, about that period, more than once, inquiring for Dr. Webster; — when you take all these things into account, Gentlemen, you will have a pretty clear understanding of the relations between these parties.

At times, by the prisoner's own solicitation, — at other times, in consequence of information received from Mr. Pettee, — Dr. Parkman is constantly repeating his calls upon him. For what? Dr. Webster has no money to pay him. What is his condition? Here is this creditor, inexorable, as he calls him, and his counsel virtually repeats the charge, — *inflexible*, I

think, would have been more just, — reminding him of his promises repeatedly made and as constantly broken.* The cloud over him is broadening and blackening, day by day. What can he do? To what is he exposed? To the disclosure before the world of his false reputation! The exposure of his fraud! But more, — and that which comes nearest home to the bosom of such a man, possessing, as he doubtless does, strong domestic attachments, — all his effects were liable to be seized at any moment, and his home stripped of that which stood as security for his debts. His household furniture was all that was left. The minerals, as you will see when you examine the mortgage, were already disposed of, and money raised on them to pay his debts. That source had been altogether exhausted. You will see by the papers we put in, that his friends' benevolence and beneficence had also been exhausted. He was left stripped and bare, to receive the shock coming upon him from his creditor, whose just indignation he had reason to dread. What was involved in this impending blow, which he thus feared was about to be struck home upon him? The loss of caste! The loss of reputation! For he could not stand an hour, with that reputation assailed and exposed.

* While these sheets have been passing through the press, the Editor has received a note from the Attorney General, from which the following extract seems to be proper in this connection: —

"I did not feel called upon to express in the course of my argument my sense of the injustice which had been done to the memory of Dr. Parkman, by the assumptions respecting his language and deportment and his relentless pursuit of the prisoner, in the closing argument for the defence. For these assumptions my learned friend must have relied mainly upon the uncorroborated statements of his client, who alone is responsible for them. Since Dr. Parkman's death, they have been repeated and aggravated by him in what, by a singular credulity, is called his confession, made to the Rev. Dr. Putnam. I am therefore desirous of having it appear that I abstained from repelling these imputations upon the character of a just and good man, only because they seemed to me to have no legitimate bearing upon the question before the jury, and not because I regarded them as having the slightest support in the real character of the deceased. Although Dr. Parkman was personally unknown to me, from most satisfactory evidence to which I have had access since the trial, I can say without qualification, that these attacks upon the character of his victim made by the prisoner, through every medium by which he could gain access to the public ear, are scarcely less wanton and atrocious than that which he made upon his person while living, and by which he terminated his life. Whatever impressions may have been sought to be created to the contrary, I am satisfied that Dr. Parkman, instead of being a rigorous, harsh, and unforgiving creditor, was a man whose benevolence and usefulness, whose kindness to the poor and oppressed, and whose *forbearance towards his debtors*, were as eminently his true characteristics, as his high sense of justice and his detestation of hypocrisy and fraud. That Dr. Webster himself so understood his character is apparent from the evidence in this case. For, after the long forbearance and indulgence of his creditor, it appears that he not only postponed Dr. Parkman's claim to that of Dr. Bigelow, another of his creditors, when he was in funds from the proceeds of the sale of his lecture-tickets, but that he did not deem it necessary to propitiate this inexorable creditor by paying him any portion of the balance still left in his hands after Dr. Bigelow had been paid."

Now, Gentlemen, when you come to motive, I undertake to say, that no poor, illiterate outcast, from the dregs of social life, who prowls out from his hiding-place to steal bread for his starving wife and children, ever had a motive which addressed itself with more force to him, than was thus addressed to this prisoner by circumstances like these, to get rid in some way, — in any way, — of this tremendous cloud that was darkening all around him and deepening every hour.

The prisoner is undeniably the last man with whom Dr. Parkman is shown to have been in contact. Dr. Parkman is found dead on his premises, and under his lock and key; and he gives no explanation. Dr. Parkman's property is found in his possession; and he gives a false account of how he came by it. Dr. Parkman's body is mutilated, under such circumstances as I have shown you could not exist without the prisoner's knowledge. His own movements, acts, declarations, and the unconscious disclosures which his fear of detection wrung from him, are evidences of his guilt.

Now, Gentlemen, what were his financial relations to Dr. Parkman? Here is a most instructive chapter. Dr. Parkman had held two mortgages: — one to secure the four-hundred dollar note, which was given in 1842; and another, which secured that note and another note for two thousand four hundred and thirty-two dollars, which was given in 1847. The mortgage that was given in 1847 covered all his household furniture, all his books, minerals, and other objects of natural history. The cabinet of minerals had been disposed of, and his books and household furniture constituted the remaining security for the two thousand four hundred and thirty-two dollar note, in which was included the four-hundred dollar note, although it was still retained by Dr. Parkman.

In 1842, Dr. Parkman had made a loan to Dr. Webster of four hundred dollars, and had taken a mortgage.

Mr. Merrick. — There is no evidence of it.

Attorney General. — It appears that it was so. He took his note for four hundred dollars. In 1847, a loan is made to Dr. Webster, of which Dr. Parkman contributes five hundred dollars. The whole amount of that loan is sixteen hundred dollars. In addition to that, there is a balance of three hundred and forty-eight $\frac{83}{100}$ dollars, which is included as an indebtedness to Dr. Parkman on the former loan; five hundred dollars contributed, and three hundred and forty eight $\frac{83}{100}$ dollars which is still due on the four-hundred dollar note, — constituted Dr. Parkman's interest in the larger note. Dr. Parkman takes the mortgage for himself and for all the other contributors, in his own name. Dr. Webster subsequently, accord-

ing to the statement found in his possession, made by his friend Mr. Cunningham, had paid all Dr. Parkman's contribution to that loan, except $125.

On the 25th of April, 1849, the actual indebtedness of Dr. Webster to Dr. Parkman was $456.27. That was made up of the old balance upon the four-hundred dollar note, which, at that date, amounted to $348.83, and $125, the balance of the new loan, and then deducting from these, $17.56, for which Dr. Webster held Dr. Parkman's receipt. These, you will see, are the items which make up $456.27; and they are due at different times. All Dr. Parkman's interest in that two thousand four hundred and thirty-two dollar note is included in the $456.27. Then Mr. Cunningham tells him, in the paper which you will have with you, when you retire to deliberate,

"You owe Dr. Parkman	$456	27
Mr. Prescott	312	50
Mrs. Prescott	125	00
Mr. Nye	50	00
Mr. Cunningham	25	00
	$968	77."

Now, do you think that Dr. Parkman, with his habits of business, intended to cancel that mortgage? You will remember that I invited the counsel to explain this. But they stopped their evidence at this point, and so it stands upon the papers. Dr. Parkman never intended to take that mortgage with him to the Medical College for any such purpose. Other parties had an interest in it. He says, on this very note for $2,432, that the other mortgage given to secure the four-hundred dollar note is to be cancelled when he receives $832 on the large note. He had received $375 before Mr. Cunningham made his examination. Then there was a balance due him, as we have shown, of $456.27; and to the other contributors to the loan, there was due a further sum of $512.50, which was included in the large note and secured by the mortgage.

Chief Justice. — What was the date of the note of 1847?

Attorney General. — It reads as follows: —

"*Boston*, — *Jan'y 22d*, — 1847.

Value rec'd, I promise to pay to Geo. Parkman, or order, twenty-four hundred and thirty-two dollars, within four years from date, with interest yearly; a quarter of said capital sum being to be paid yearly. J. W. WEBSTER.

Witness:

CHARLES CUNNINGHAM."

You see that this note is at four years. Hence, the amounts due upon it to the respective parties were not then payable. A quarter of it only was to be paid yearly. If Dr. Parkman had received his own portion of it, what would he have done? Would he have given up that note to the debtor, cancelled the mortgage, and left the other creditors, for whom he was a trustee, without security and without remedy? Dr. Webster had his statement from Mr. Cunningham of the amount due Dr. Parkman in April, 1849. It was a sum without interest. Having got these notes into his possession, he is to make up his story; and, in order to do that, he must fix upon the sum he was to say he had paid Dr. Parkman. He did not owe Dr. Parkman $483.64 on the 23d of November. We prove that by his own documents; we prove it by the papers found in his wallet. He sets down to frame his story; — and there is that document! — the most extraordinary that was ever found in the pocket of an honest man. I desire to call your attention to it more particularly.

You will remember the interviews which the prisoner had with Dr. Parkman. On the 9th of November, Dr. Parkman calls on him. On Monday the 19th, he calls again, and leaves him with that declaration, — "To-morrow, something must be done!" The next day, Dr. Webster writes him a note. You will find that the Monday night's interview is entirely ignored in this memorandum. So, also, nothing is said about Dr. Parkman's going over to Cambridge to see him; nothing as to what occurred between them, from the 9th until the fatal 23d. What now is the story he prepares? He tells it twice on the same piece of paper. What is the object of that? Is a man keeping a journal on such a piece of paper as that? If so, why a double version of the events? If he is writing an account in consequence of the disappearance of Dr. Parkman, he had already communicated it to Dr. Francis Parkman, to Mr. Blake, and others! But, Gentlemen, there is intrinsic evidence that, on the 23d, $483.64 was not the sum he owed Dr. Parkman. Here is his paper: —

"Nov. 9th, Friday, rec'd $510.00
234.10 out Dr. Big.

Pettee, cash — $275.90
Dr. P. came to lecture room, — front left hand seat." Of what importance was that? "Students stopped — he waited till gone, and came to me, and asked for money — Desired him to wait till Friday, 23d;" thus, you see, stepping over entirely the evening of the 19th; "as all the tickets were

not paid for, but no doubt would be then — he good deal excited — went away — Friday, 23d, called at his house about 9, A. M.; told him I had the money, and if he would call soon after one, w'd pay him. He called at 1-2 past, and I paid him $483.64." Now, there is added at a different time, with different colored ink, in the last line of the last paragraph but one, — "Said I owed him $483.64."

Here are his own figures; and yet he states that Dr. Parkman says he owed him, on the 9th, $483.64. Then he says, on the 23d, after a half-month's interest had accrued, that he paid him just that sum. Do you think, if Dr. Parkman was standing on points like these with this man, — that, if he owed him that amount on the 9th, he would not have insisted on the one or two dollars interest, which would have accrued on the 23d?

Then, between the two periods of writing these two pages, you can see that on the account which he had received from Mr. Cunningham he fixes the amount in this way:

"$456.27 due April 25th, 1849.
27.37 interest.

483.64."

Now, if you will reckon, you will find that that amount of interest, $27.37, is just six per cent., or one year's interest upon $456.27; which would carry it over to April 25th, 1850. Do you think that Dr. Webster would have paid a year's interest, when only seven or eight months' was due? But perhaps you will say that he did not do it, and that this amount is made up from other items, — from the $125 and the $17.56, to which I have already alluded, which was a receipt for money that Dr. Webster had paid Dr. Parkman. But he evidently did do it by casting a year's interest, as we show by his own figures. Now, to cast six per cent. on all the above items is palpably wrong, and what Dr. Parkman would never have done, because the several items were due at different times: whereas the computation is made of the six per cent. on one principal sum of $456.27.

In the second account of his interviews with the deceased, contained in this paper, he says, "9th, due Dr. P., who called at lecture, $483.64, by his account. — Desired him to wait till Friday, 23d. — Angry. Friday, 1 1-2, paid him; he to clear mortgage;" and the other matters, which are not material. You will have the paper with you, and will examine it for yourselves.

Then there is found in his wallet the little piece of paper

bearing the figures "$483.64;" and another memorandum which had reference to something else — "*Jug — keys — tin box — solder!*" Why is this memorandum of "$483.64" put into his pocket and carried about? It is evident that it is all a falsehood. But it is a fiction which concerns his reputation; which concerns everything near to him; and it was important that he should be consistent in it. Having committed himself to Dr. Francis Parkman and to Mr. Blake, he must adhere to his statement to them. Lest he should fail by some slip of the tongue to state the right amount, he carefully writes down $483.64, and puts it into his wallet.

Then, Gentlemen, what is more important than all, there is found, in the manner that you have already been apprised of, through the sentence in the letter written to his daughter, "Tell mamma *not to open* the little bundle which I gave her the other day, but to keep it," — a bundle which, upon examination, is found to contain these two promissory notes.

From beginning to end, the prisoner has represented, that, when Dr. Parkman took that money from him, he turned suddenly round, and dashed his pen through *the signature.* He has never said a word about two notes, but expressly confined his statement to one piece of paper. And yet there are found in his possession two notes, bearing those marks, which, if made by Dr. Parkman, must have required more time and the use of a different instrument than his statement represents. That is placed beyond question by the uncontradicted testimony of both the experts, — Mr. Gould and Mr. Smith. We show you how it might have been done; and you will have an opportunity of judging, by comparison of the erasures with the peculiar instrument found on his premises, whether our explanation is a probable one. At all events, he has falsified; and this is not the most serious thing about which he has falsified.

At this point, the usual hour of the morning adjournment having arrived, the Attorney General suspended his address, and the Court adjourned to three and a-half o'clock, P. M.

Afternoon Session.—Saturday, March 30.

On the coming-in of the Court at half-past three, the Attorney General resumed his argument, and continued as follows: —

I hope, Gentlemen of the Jury, I shall very soon relieve you and myself from the examination of this painful case. I

am aware that I have already occupied more of your time than the case may seem to have required, and I thank you for your patient attention. But there is a duty resting on me which I cannot evade, though its performance should exhaust your patience and my own strength.

I proceed now to consider, in connection with the remarks submitted to you this morning, the proposition that Dr. Webster has falsified in his various representations; and you will judge how consistent those representations are, when you come to consider the statements he made to Mr. James H. Blake, to Mr. Littlefield, and to Dr. Francis Parkman, on Sunday, in connection with the statement to Mr. Thompson, his own witness. Mr. Thompson has admitted that he gave the statement, under his own hand, to Mr. Andrews, to the effect that Dr. Webster told him there were two persons present when he paid the money; and he now states that he thinks he told him there were two persons present, though he is not quite certain whether this was the statement, or that there were two persons present the moment before, one of whom was the janitor, and who had then left. Now, neither of these statements was true.

Then the statement he made to Mr. S. Parkman Blake, about his intrusting the mortgage to Dr. Parkman, to carry it over to Cambridge to cancel it, is untrue. Dr. Parkman, as I have already attempted to show, would never have cancelled that mortgage, involving as it did the interests of other parties. Then, take all the circumstances under which he states that Dr. Parkman received that money and went out from that building with the bills in his hands. You will judge upon the evidence whether his representations in these particulars are true.

I now come to a more serious matter still. I say to you, that, from the evidence in this case, the defendant told the toll-gatherer that he had paid Dr. Parkman in the money which he received from the medical students, when he had not paid him from that money. I say to you further, from the evidence here and from the absence of evidence, that he never paid Dr. Parkman that money at all.

Take the deposits in the Charles River Bank, and the manner in which they were drawn out, and compare them at your leisure with the account which Mr. Pettee rendered here, as the collecting agent of Dr. Webster, of the times he paid him money.

It now appears that the whole number of students was 107. Mr. Pettee has accounted for 99; Mr. Littlefield, for

two. Where could he have obtained the money to pay Dr. Parkman? Not from the sale of the tickets, the proceeds of which he had — in his embarrassed circumstances, arising out of an improvident mode of living, which, of itself, is dishonesty — devoted to other objects. A man who knowingly lives beyond his means, and leaves those who trust him to suffer from his improvidence, is a dishonest man.

Take these representations, and take the evidence before you, and then ask from what source he derived that money, and you will comprehend the great, overshadowing falsehood which pervades and penetrates this whole case. This prisoner and his counsel have never been unmindful of the great importance of showing where he got the money to pay that $483.64 to Dr. Parkman. Let me say, that for four months he has had at his command the entire treasury of this Commonwealth, to summon here every witness from whom he had ever received a dollar.

Mr. Merrick. — How can that be? — four months!

Attorney General. — You will observe the coroner's inquest was held immediately after this terrible event. You will observe, that, the moment the results of that inquest were placed in my hands, they were passed to the prisoner's counsel before I had read them myself; and they have had them from that hour to this. I am willing to take a still more recent period, — the finding of the indictment, in January, 1850. I am willing to take that as the time when they first saw the importance of ascertaining where the money came from; but not a syllable of explanation is vouchsafed to us. And why? Because he had no such sum of money to receive from any quarter; least of all, from that which he declared to the toll-gatherer he did receive it from, — the sale of his tickets.

The laws of this Commonwealth had placed its entire treasury at the command of the prisoner. Every dollar expended for witnesses, and for the officers who summon them, in a capital case, is paid by the Commonwealth, as well on behalf of the prisoner as on behalf of the Government. So that, without expense to himself, every student that attended his lectures might have been summoned. Every one who had paid money to Mr. Pettee, or to anybody else, on his account, could have been placed upon that stand, and have shown us, to a mathematical demonstration, how much he had paid, and to whom. Gentlemen, not a dollar is shown to have been received by the prisoner which could have been paid to Dr. Parkman.

By a comparison of these two accounts, — of the deposits in the Charles River Bank, and of the payments made to Mr. Pettee, — you find a perfect coincidence between them, with a single exception. On the 14th of November, Mr. Pettee paid him $195, and on the next day he deposited $150. And now the suggestion is, that he took a $100 bill of the New England Bank out of the $195, and substituted other smaller bills for it; and that at the same time he saved out the $45, and added it to a fund which he was gradually hoarding up in small sums to pay Dr. Parkman. This is too transparent a fallacy to put to the intelligence of a jury.

We come to the unhappy conviction, that, if there is anything satisfactorily shown in this case, it is, that Dr. Webster had no money to pay to Dr. Parkman; that he was compelled to fabricate his statement and his story; and that he did it in the manner I have stated to you.

Then, that interview with Mr. Pettee: — what is indicated by that? Why, Gentlemen, it was an accidental interview. Mr. Pettee states to you that he communicated no message. He called there at nine o'clock on that fatal morning; and what did Dr. Webster try to impress upon his mind? Why, he told him that audacious falsehood, that "Dr. Parkman was a peculiar man, — subject to aberration of mind; and that he had placed his business out of his hands, and put it into the hands of Mr. Blake." "But," said he, "you will have no more trouble with Dr. Parkman. *I have settled with him.*" That was after he had made an appointment with him to meet him at his own apartments in the Medical College, where, separate and walled in from all the rest of the building, he would be perfectly secure from interruption.

And is there not a strange inconsistency in the story that he went to Dr. Parkman's house, and invited him to the College to settle with him? Why not have paid him there? Is there a particle of evidence that he was in a better condition to pay him at half-past one, than at nine o'clock? Did not Dr. Parkman transact business at his own house? If he had had the money, he would have said, "Thank God, I will get rid of this creditor now!" And what evidence is there that he received any money between nine o'clock and half-past one o'clock? Whoever paid him money in that brief interval, they have had all the resources of the Government to bring here to testify to the fact; and, believe me, nothing which they could do has been left undone.

If he did not pay Dr. Parkman, — and that he did not is apparent from all these facts, — if he did not have the money

to pay with, — then how did he get those notes? You will find a little memorandum on one of them, that it was paid "Nov. 22, 1849." Was that the first thought, corrected by an after-thought, that Dr. Parkman might have shown these notes to Mr. Kingsley, or Mr. Shaw, or somebody, on Friday morning; and therefore that it would be fatal to him to represent that he paid him then? Was it prompted, in the first instance, by the fact that at nine o'clock he had told Mr. Pettee "he *had* settled with him"? However this may be, there is found on one of the notes, in his own handwriting, "$483.64, *balance paid*, Nov. 22, 1849."

[Mr. Bemis consults with the Attorney General.]

Attorney General. — I am reminded, Gentlemen, — and it is a fact that I ought not to forget, for it is pregnant with importance, — that on that Friday morning Dr. Webster did receive from Mr. Pettee a check for $90, the proceeds of the tickets, the source from which he said he would pay Dr. Parkman, and from which he afterwards said he had paid him. And yet we find from the books of the bank, that this identical check for $90 was deposited by him, on the next day, to his own credit, in the Charles River Bank. I leave here all this matter of finance with a summary statement of the result to which a careful consideration of it must lead you. To my own mind, it renders all the other points of this case almost superfluous. Unexplained, it is decisive of the prisoner's guilt.

The result of the matter, Gentlemen, is this. Dr. Webster owed Dr. Parkman between four and five hundred dollars. For this Dr. Parkman held two securities, — the large and the small note. Upon the large note there was due to persons other than Dr. Parkman, $512.50; and Dr. Parkman held the large note and mortgage as their trustee for this sum. Now, admitting for the moment, that the prisoner did, on the 23d of November, pay to Dr. Parkman the sum of $483.64, what would have been done? Of course, the small note would have been given up, and *the amount paid would also have been indorsed on the large note*, which, with the mortgage, would then have been retained by Dr. Parkman, as trustee for the others whose debts were secured by it. What was done? Why, the large note was found in Dr. Webster's possession, *cancelled*, as well as the small one! How came he by it? Did Dr. Parkman give up to Dr. Webster a note upon which $512.50 was due to other persons, and thus defraud those other persons, to oblige a man who, he believed, had defrauded him? Nobody would believe such a state-

ment: no such pretence is made here. No attempt has been made to explain this matter. The prisoner's counsel, of course, see the bearing of this; but no effort is made by them to explain it. No hypothesis is suggested which will account for it; and the fact stands undisputed and unexplained, that Dr. Webster robbed Dr. Parkman while alive, or took from his pocket when dead, a note, which, upon any statement made by him or his counsel, did not belong to him. In other words, it is virtually admitted, that the prisoner has committed robbery, if he has not perpetrated murder. Whether he did commit the robbery and let his victim go forth to publish the fact, and that victim was immediately thereafter murdered by some person who providentially met him and did the deed, just in time to save the robber from detection and punishment, or whether the robber was himself the murderer, it is for you to judge.

There is a class of facts in the case to which I shall now briefly call your attention, but upon which I do not design to dwell. They refer to the condition of things in the laboratory, and connect the prisoner more or less with the remains of the deceased.

In the privy vault, there were found with the remains certain towels marked W., the initial letter of the prisoner's name; one of which, it is proved, was in his upper room on the morning of the day when the fatal interview between him and Dr. Parkman took place.

Then, Gentlemen, the knife found in the tea-chest, imbedded in the tan with a portion of the remains! The counsel for the defence, in commenting upon this, overlooked the important fact, which they had themselves put into the case by their cross-examination of one of the Government's witnesses, that, on the 17th of November, that knife was at Cambridge, and afterwards, between the 17th and 23d, was brought over to the Medical College. Now it is said, that finding that knife in the tea-chest furnishes evidence of design on the part of some one to fasten suspicion upon Dr. Webster, in connection with the remains; and that the minerals, which did not entirely cover the tan, on Tuesday, when Kingsley saw the tea-chest, were not put there by Dr. Webster. The very fact of that search, that Mr. Kingsley's attention was directed to the tea-chest, — would it not prompt the prisoner to pile on more minerals, and was not that evidently done? And the knife was found there. It had recently been in his possession. And who, pray tell me, — if I have not utterly failed in making myself understood, — who

could have placed it there but Dr. Webster himself? And, Gentlemen, it may very well be said, that, if that hammer, the disappearance of which is one of the marked and mysterious facts in this case, had been got rid of, he might also have been equally anxious to be rid of the knife.

The yataghan was there, — a murderous-looking instrument, — recently cleaned, as Dr. Jackson testified. As you will see, it is enough for me to say that here were murderous instruments connected with the prisoner, and with no other human being.

Why, too, was that tan sent over from Cambridge in such a suspicious way? Why not let Mr. Sawin have admission to his laboratory, as he had had two hundred times a year before, as he swears to you? Whether it was to be used for the tea-chest or the tin chest, neither you nor I can tell. It is an anti-putrescent, and would stifle odor. And what is most significant, although Mr. Sawin brought over for him two empty boxes, the fagots, and the bag of tan, the bag of tan was taken into the laboratory by Dr. Webster, and the others left outside! If anybody else had done this, after his direction to Sawin to leave them all outside the door, would not Dr. Webster's eye have discovered it?

There were charcoal and anthracite coal and pitch-pine kindlings, which disappeared in considerable quantities during that week. The process was slow; and I will tell you why it was slow. The minutest circumstances are sometimes most important. The report of the physicians shows that there was among the remains a shirt-button. He had the clothes and all parts of the dress to get rid of, as well as the body and limbs! This serves to account for the time which was expended.

Then the blood upon the pantaloons and the slippers! This was alluded to in a very summary way by the counsel, as being of no consequence. I submit whether it is or not. If those drops of blood fell from above, then I agree that it is entitled to much less weight than it should have, if, as is shown by the testimony of Dr. Wyman, it was probably spattered from beneath.

And then those stains upon the stairs! They were there as early as Wednesday, when Littlefield saw them, tasted them, and found them acid. His testimony is abundantly corroborated by Dr. Wyman, who says that they were fresh the Sunday after. Kingsley saw them also, as early as Monday or Tuesday. It turns out that they were made by nitrate of copper; and I defy any man to look at

them, as you have looked at them, and believe that they were not thrown there by design, spattered, as they were, up against the perpendicular sides of the stairs. It is proved that they are of a material which is among the most efficient agents for removing the characteristic signs of blood. Dr. Wyman tells you water is as good for this purpose as anything. Water was used most freely; the Cochituate was always running. The party had succeeded in removing all other traces. That which confessedly *was* done would have been more difficult than the removal of the traces of blood, if traces of blood there were. If the mortal wound produced an external effusion of blood, to the extent that would seem to be implied by the course of argument on the other side, — which by no means appears from the testimony, as a man may be stabbed in the region of the heart, and all the effusion, or almost all of it, be within the chest, — here were the means of removing blood.

Much was said of the overalls. We did not introduce evidence concerning them. I have no idea that he wore his overalls: I never made a point of it. So all that requires no answer.

Those skeleton keys! Did he state truly where they came from, or was there a connection between them and this transaction? Was the filing done by himself? — for, remember, they were filed. And is it a probable fact, that the keys that would open the dissecting-room were picked up by him in the street and carelessly thrown into that drawer? We cannot trace the course of such a man's inexplicable conduct, any more than we can trace the course of the serpent upon the rock. But there are signs and indications which will not be lost upon intelligent men.

Then we find in his private room the grapples, made from fish-hooks which had been purchased on the previous Tuesday; one made of three hooks, one of two, and one of a single hook. When you examine them, you will observe that oxydation had commenced upon them; one of them had become quite rusted. Then, on Friday, he purchases the smaller hooks. Had he tried the larger, and found that they did not answer his purpose? You will determine what degree of importance is to be attached to them. My inference is, that they were prepared to draw up the remains from the vault, — to be consumed as he had opportunity, or to be deposited in the tin box, when it was finished, for removal and concealment.

Around the thigh in the tea-chest, there was found a piece

of twine which was evidently cut from a ball of twine found in a drawer of his private room, to which the prisoner alone had access; a fact overlooked by his counsel, in his summary disposal of this circumstance by referring it to the agency of the mysterious personage who figured in the argument. I ask you, whether this does not connect the prisoner directly with the remains in the tea-chest.

But I come to what is of more importance than any other fact connected with the condition of things in that laboratory. Dr. Webster carried in his pocket the key of that privy, in the vault of which were found those remains! That is a fact in this case which has not even been alluded to by his counsel. Gentlemen, look at that key, when you retire to your room, and ask yourselves the question, whether a gentleman would be likely to carry around in his pocket so cumbersome a key as that, which he could by no possibility, for any honest purpose, use anywhere else. When that key is called for, what is his answer? "It hangs up yonder." It is not found there; the key of his wardrobe is found. He says, "I do not know, then, where it is." Then that door is broken open; and it turns out afterwards, that, while they were at the jail and before they had gone to the College, that privy-key which locked up those remains had been borne about in the prisoner's possession, and had been taken from his pocket by the person who arrested him.

In the great case of Courvoisier for the murder of his master, Lord William Russell, — that case which has made all Europe ring with strictures, just or unjust, upon the conduct of his counsel, — the great fact insisted upon was, that the bloody gloves were found in the trunk of the prisoner; — put there (as it was contended by his counsel), at a subsequent time, to fasten suspicion upon an innocent man. Here were the remains themselves, found, not in the trunk of the prisoner, but in a place to which he alone had access; the key of which he kept in his own pocket, and the possession of which he denied. You will determine whether I have said too much, or spoken too strongly, in saying that this prisoner stands justly charged with the homicide of Dr. Parkman, for the reason that his mutilated remains have been found under the prisoner's lock and key!

The matter of the blankets, — the new blankets and counterpanes found in the laboratory, — is inexplicable to me. Why they should have been put there, or carried there, I do not know, and you will judge. I make no suggestion respecting them.

Now what was his conduct, and what was his whereabout, through that week?

In the first place, he was locked into his laboratory at unusual times during a week of official leisure. Has he shown, or attempted to show, that he was engaged in anything which required his presence there? That he was so locked in does not depend on Littlefield's testimony alone. Clapp, Rice, Starkweather, Fuller, Mrs. Littlefield, Mr. Samuel Parkman Blake, Mr. Sawin (who had often gone there before), testify to it.

The Cochituate water was running. No fires were wanted; and yet it is in evidence, that fires were kept up during that week, more intense than were ever kept there before, and in places where no fire was ever kept before.

Gentlemen, when was he there, at the Medical College? I have already stated to you and to the Court, that, upon a critical examination of the testimony of his three daughters, there is a most significant and remarkable corroboration of the testimony of Littlefield. They do not conflict in any particular. He was at the College on Friday afternoon. What was he doing there? Where did he dine? I have already asked that question; and I repeat it again. It is worthy of your consideration.

On Saturday morning, you have no trace of him; — from Saturday morning at one o'clock, until Saturday in the afternoon at one o'clock. Have you any assurance where he was during that interval? Is not the argument just and fair, that he had come over in one of those flittings of his, from Cambridge to the Medical College? No one else had a key to the building, but himself and Dr. Leigh; and there is no pretence that Dr. Leigh was there. That door was left bolted at night, and was found unbolted in the morning.

In the course of the forenoon of Saturday, when Littlefield went in to build his fire, and was about to go down the laboratory stairs, he received, for the first time in his life, the peremptory order, — "Mr. Littlefield, go out the other way." He went out as he came in. On Sunday he was at the College. Then he had those interviews, of which I have spoken, and upon which I do not care to dwell. In his interview with Mr. James H. Blake, his story was prepared; and you have been asked, with great significance, "If he were a guilty man, why should he communicate the fact of his interview with Dr. Parkman, — for nobody would have known it, if he had not?" If nobody was to know it, why does he have the notes? How did he know but that they had been exhibited to Dr. Francis Parkman on that very Friday morning? The

reason for communicating his interview is explicable on other grounds also. How could he know but that he would be remembered on that morning by the servant? And what a fatal fact, if he kept it to himself, if it should turn out afterwards that he was recognized!

But suppose he had been perfectly sincere, and had wanted simply to communicate with this family the fact of the interview; then I submit to you, considering the relations between him and the Rev. Dr. Parkman, that he would not, at least, have slept that night without sending a note to relieve the agonizing suspense of that family. But he waits till Sunday, and is then dissuaded from going into town in the morning, in order to go to church at the College chapel.

He had an early dinner on Sunday, that he might go over and communicate with Rev. Dr. Parkman. But he does not visit him till he had spent some time at the College. He does not reach Dr. Parkman's house till four o'clock in the afternoon; and then he makes a communication, the object of which seems to be to impress on Dr. Parkman's mind just two things: — one, that he had paid money to his brother; which brother he knew was never to appear; and which payment was to be his answer, if the notes should be traced to his possession; — the other, that his brother was in a strange condition, and that he rushed out in a manner that indicated a disordered mind. This was the substance of all that he had to say in that cold, business-like, unsympathizing interview with the family of his own pastor and the pastor of his children.

Then, on Monday, that striking interview with Mr. Samuel P. Blake, when he braced himself up to answer questions! His counsel complains that we charge him with being too warm in his interview with one, and too cool in his interview with the other. But both are consistent with the theory I have advanced.

In the interview with Mr. James H. Blake, Dr. Webster stated substantially that Dr. Parkman had the mortgage with him, although we find that very mortgage in Dr. Parkman's house, as you have learned from Mr. Shaw.

The prisoner had also an interview with Messrs. Fuller and Thompson on Sunday night. Mr. Thompson did not observe as much as Mr. Fuller did, and Mr. Fuller did not hear what Mr. Thompson heard. Mr. Fuller witnessed the agitation of Dr. Webster; Mr. Thompson heard the statement of his interview with Dr. Parkman. The testimony of the two is to be taken together. But the statement, either that two

persons were present when he paid the money, or two persons the moment before, one of whom, the janitor, had just left, was a pure fabrication of Dr. Webster's.

On Tuesday he stated that he wanted no fires; his lecture would not bear the heat. With the knowledge of this fact, can the counsel turn round and say that the Government have not shown that it would bear it? Dr. Webster could show by the students what the subject-matter of his lecture was on that day; and the chemists here could tell whether it would bear heat or not. This is for him, and not for the Government, to show.

Then Clapp's search! It amounts to nothing, except the leading away from the privy and the opening of another door through which Dr. Webster led them. Mr. Kingsley saw a fire in the assay-furnace on that Tuesday. That fire was burning, and Dr. Webster was there, and the tea-chest was there also, — the tan and the minerals in it, — on that day.

Then, Gentlemen, he gives that turkey to Mr. Littlefield! If this was an attempt at conciliation, it was not an attempt of Littlefield's, but of Dr. Webster's. And is it consistent with the fact that he entertained such an aversion, as he says he did, towards this man?

If you believe Mr. Littlefield, on Wednesday Dr. Webster was at that furnace. He was away from home, by the testimony of his own daughters. He made up that fire in the morning, covered it up, and, locking up everything fast, left it to burn and smoulder away in his absence.

Then, his other object, that of keeping up the *alibi*, was to be attended to. He was at home at dinner on Tuesday; but he came into town in the afternoon. For what purpose? So far as it appears, — to give Mr. Littlefield this turkey! Nothing else!

On Thursday, Thanksgiving-day, he was at home after eleven o'clock in the forenoon. So he was on Friday morning, at eight o'clock. At nine o'clock on that morning, he was at Mr. Waterman's shop, ordering the tin box. It is said by one of his daughters, that they were in the habit of sending plants to Fayal. If that had been the purpose of this box, — such a one as he had never needed before, — would it have required the strong handle? If live plants were to be sent in it across the ocean, would it have been soldered up tight, so as to exclude all air and moisture?

More decisive than this, his daughter tells you that she does not know that there was any intention of sending plants at that time; and Mr. Waterman tells you he never made such

a box for him before. But that interview with Mr. Waterman is very significant. "Dr. Parkman," as Dr. Webster says very energetically, "*did* go to Cambridge;" and then he tells the story about a man's having seen, in a mesmeric state, a cab in which Dr. Parkman was carried off; that the number of it was stated; and that it had been examined, and that blood was found in it!

I do not know how it strikes your minds; but that a teacher in Harvard College should be here, in the city of Boston, in the shop of a mechanic, trying to impress upon this man the truth of such a story as that, strikes me as singular. He follows up the repetition of the same story to Mr. Littlefield and his wife, also, that day.

Then, in the course of the same day, he buys the fish-hooks; and in the afternoon goes over to Mrs. Coleman's, and has that singular interview with her. What was he trying to ascertain from her, or to make her say? Why, that Dr. Parkman was seen by her on Friday! "Are you sure it was not on Friday?" And even after she had given him the reasons of her belief that it was not Friday, on taking his leave at the door, he repeats the question — "Are you sure it was not on Friday?"

Finally, on some one of the nights of that week, before Thursday, upon the evidence of Mr. Sanderson the watchman, he went out from Boston without his family in the late omnibus, between eleven and twelve o'clock.

I have thus traced the prisoner through that week preceding his arrest, and shown that he did no more than what it was perfectly competent for him to do. Let me add, that his visit at Mr. Treadwell's was not by invitation, but upon a voluntary call. His playing whist is also all consistent with his subsequent conduct, and with what he has shown here. It required nerve. He has it, and enough of it; excepting, and only excepting, when fear fell upon him, and the dread of impending exposure made him afraid.

Gentlemen, I have but a word to say in relation to these anonymous letters. The counsel has called your attention to one single feature, which was spoken of by Mr. Gould as characteristic generally of Dr. Webster's writing. He has called your attention to it in this letter [exhibiting to the jury the "Civis" letter], as being of a different character. That is, the figure 9. Look at that figure 9, and see if it is not evidently disguised.

I do not profess to be an expert; but when I find a respectable man, like Mr. Gould, who has paid fifty years'

attention to this matter, and another, Mr. Smith, who has had perhaps thirty years' experience, coming upon that stand, and saying to a jury, that they had made a thorough examination, and that they have no doubt that the handwriting is that of Dr. Webster, I think their testimony is entitled to some respect. If a mechanic should come and tell me as a lawyer, that such a thing could be, and such a thing could not be, and it was exclusively within the province of his art, — if I believed him to be an honest man, I should defer to him. If a shipmaster should come upon the stand, and undertake to tell me as a lawyer, that, under certain states of the wind and of the ship, a certain result in navigation would follow, I should believe him; because he has experience, and is competent to instruct me.

So, when a man comes and says, that, having had fifty years' experience in the examination of handwriting, he has no doubt — and in that belief is confirmed by the testimony of another witness, who also has had large experience — that the Civis letter was written by Dr. Webster, I submit that his opinion is entitled to no little consideration. That letter is written by a man accustomed to composition. It is signed "Civis," the Latin word for "Citizen." It was written by a man who had some knowledge of the Latin tongue. Who would be likely, in a matter so interesting to the public, to have undertaken to communicate with the City Marshal under an anonymous signature? If it were Dr. Webster, and he was innocent, would he not have done it openly or personally, making such suggestions as he considered important?

The other letters are not testified to so positively; namely, the "Dart," and, what I have called, the "Sanscrit" letter. But you will find that the latter is written on a fine, delicate note-paper. It was not written with a pen. That there was an instrument found in Dr. Webster's laboratory which is fitted to make this, is proved; and that instrument is such an instrument as might have made those erasures upon the notes, which were not made with a pen. But I submit this part of the case to your judgment, without pressing it upon you.

Gentlemen, I do not know but I have said all that is necessary for me to say with regard to Professor Webster's conduct prior to his arrest. I now propose to add a word respecting his conduct afterwards.

On the night of the discovery of the remains, he was waited upon at his own house by three police-officers, after his premises at the College had been searched for the missing body of one whose disappearance had excited the entire com-

munity. They informed him that they wished to make a further search of the College. He made no objection. He called their attention to the fact, that Mrs. Coleman had seen Dr. Parkman. Did he suggest this in the hope, that, upon calling on Mrs. Coleman with these police-officers, she might modify her statement? They stop at the Leverett-street Jail. Mr. Clapp goes in, and upon returning requests him to get out. Submissively, and without inquiry, he follows them into the prison. Who is Dr. Webster? — and who are they? He, a Professor of Harvard College! and they, police-officers of the city of Boston! He follows them; and not till they reach the inner office of the jail, does he ask what it means. Mr. Clapp replies, not that Dr. Parkman's body is found, but, "Dr. Webster, you remember I called your attention to the soundings which have been made above and below the bridge. We have been sounding about the Medical College; we have been looking for the body of Dr. Parkman. We shall look for it no more; and you are now in custody, charged with the murder of Dr. Parkman. He articulated half a sentence," continues Mr. Clapp — "I could not understand it; and then he said, 'I wish you would send over to my family.' I told him they would better not learn it till morning. He seemed inclined to speak a word or two, and I told him he had better not say anything about it."

What was his conversation when he was left alone there with Mr. Starkweather? And remember, that not even in the cross-examination was it attempted to be shown that this conversation was not reported exactly as it took place. The appeal is then made to you, to consider him as an irresponsible person; — that he was in no condition to know what he was about; and that you ought not to regard his declarations any more than you would those of a raving maniac.

Gentlemen, he had intelligence and malevolence enough to endeavor, then and there, to make a groundless accusation against an honest and innocent man. He had sufficient self-possession to make inquiries; and, from that time, what evidence is there, that he was not master of himself? He says to Mr. Starkweather, "You might tell me something about it." "He asked, 'if they had found him.' "I told him," says Mr. Starkweather, "not to ask any questions, for it was not proper for me to answer them." This, Gentlemen, was but one of the many instances of forbearance shown towards him that night; and I venture to assert, that no prisoner ever received more considerate treatment than Dr. Webster did from all who were brought in contact with him that night. He was ex-

pressly cautioned by the officers, in obedience to the instructions of Mr. Parker, not to say anything that might implicate himself. Yet he voluntarily said to Mr. Starkweather, "You might tell me something about it, — where did they find him? *Did they find the whole of the body?*" I ask you, Gentlemen, with the knowledge which this prisoner had, that they had been sounding about the Medical College, and should look no more for the body, — what prompted that inquiry, "*Did they find the whole of the body?*"

Mr. Foreman, or either one of you, Gentlemen, — I ask you to put yourself in the condition in which Dr. Webster was that night, supposing him to be an innocent man. A tipstaff has put his hand upon your shoulder, and you are taken into custody; and the body, you are told, of the murdered man is no longer to be searched for, — that they have searched enough, and you are arrested as his murderer. Now, what would prompt you to put such a question as that, (not knowing that the body was cut up) — "*Did they find the whole of the body?*" There spoke out the guilty conscience, showing a knowledge that the body of Dr. Parkman was not an entirety, but separated into fragments. "I then asked him," continues Mr. Starkweather, "if anybody had access to his private rooms but himself." "Nobody but the porter who makes the fires!" Next a pause! Then he says, "*That villain! I am a ruined man!*" He then put his hand into his pocket, and *took something;* — and then he had those violent spasms, and the other symptoms that followed through that night; and in the presence of Mr. Cummings, the turnkey, while tossing upon his bed, unconsciously comes out from him that confession, "*I expected this!*"

Now follow him down to the Medical College. He has had no information that the body is found. Mr. Clapp had told him simply that they should search no more. When he reaches the College, and when they are searching the private room, where he knows they can find nothing, he is calm. He even tells the officers beforehand that they will find nothing there. Gentlemen, whence came that assurance? How could he have known what that private room contained, on the theory of his apartments having been tampered with, in his absence? But he calmly oversees the search, and tells them confidently that nothing will be found there. But when they get down to the laboratory, and he discovers that the remains in the privy-vault have been found, then comes that spasm again. And, if you believe what the witnesses testify to, the sweat streams out upon him, though he is complaining of cold: —

his pantaloons are saturated, and his coat moistened with perspiration!

I ask you, if this man, who, innocent or guilty, has exhibited an unparalleled degree of stoicism or of self-possession, was then suffering from mere physical prostration, or whether it was a guilty conscience that drew the sweat of that mortal agony out of him?

When he found that there was nothing discovered but the remains in the vault, upon which were no marks of identity and which he did not see nearer than nine feet, he says, after entering the carriage, "Why did they not ask Littlefield? He can explain all this. He has the care of the dissecting-room. They wanted me to explain; but they have not asked me any questions." And he comes here met by no declarations of that fearful night, which had been extorted from him by questions or inquiries. All that we have laid before you are his voluntary statements, and the unconscious confessions of mute nature in the man.

I have but one other fact to comment upon, and I will relieve your patience. On Saturday he remained in this prostrate condition. Mr. Andrews states to you that he went in there in the morning, and then the prisoner made that cruel accusation against Littlefield, "I never liked the looks of Littlefield, the janitor; I opposed his coming there, all I could;" — and that other declaration, not as the counsel put it to you, — but in his own language, — "That is no more Dr. Parkman's body than it is my body; but how in the world it came there, I don't know." This last is now turned into his defence; and it is urged that this asseveration, which is no more than his plea of not guilty, should outweigh the proof.

Gentlemen, was he in the condition in which he could have ascertained whether that was Dr. Parkman's body at any time? Can you conceive of any innocent man continuing passive through a period of nearly twenty-four hours, — for he persevered in his silence during that day, — and making no inquiry as to the identity of those remains? He sought, it is true, to ascertain from Starkweather, before they went to the College, what, under his instructions, he could not tell him with propriety. But from that hour in which he knew where, and in what condition, a small portion only of the remains were found, not a word escaped him in regard to the matter. He continued thus passive and silent till taken to the Police Court on Monday; — saying, virtually, "I will go to prison; I will let my family suffer the torture of suspense;

I will let my name be blighted by the prejudgment of the world; I will not even ask my accusers what their evidence is."

Then, on his return to the prison, he writes the letter containing this sentence: "Tell mamma *not to open* the little bundle I gave her the other day, but to keep it just as she received it."

Gentlemen, you will have that letter with you. It was written by a man of education; by a man who has lived all his days under the influences of cultivated, social, and domestic associations; by a professor in a Christian University, whose motto is, "To Christ and the Church!" He is in the cell of a prison, as he was described by his counsel, and he sits down under this terrible accusation, — an accusation that he has been guilty of a crime at which the universal heart of mankind revolts! And, Gentlemen, he is the victim of a conspiracy, which has fabricated that accusation against him! He sits down and writes to his daughter, to ask his wife to conceal that which, when discovered, proved to be the property of the man whom he was charged with having murdered!

Mr. Merrick. — There is no testimony that this referred to the notes.

Attorney General. — Mr. Clapp says that he went to Mrs. Webster, after he got this letter, and these notes were produced.

Mr. Sohier. — You are mistaken.

Attorney General. — Mr. Clapp so states it; I do not think I can be mistaken. We will have it right.

Mr. Clifford (reads from his minutes of Mr. Clapp's testimony.) — "I had been directed, particularly, to search for a certain package of papers; and asked Mrs. Webster if she had the package mentioned by Dr. Webster. Sanderson brought other papers, and, finding them not named in his search-warrant, sent them back to the trunk. I requested her to give them to me, — I would give her a receipt; and she did so." And you will find it underscored, "*not to open* that bundle."

He is writing a letter, for the first time, to his daughter; and I ask you whether he indicates in that, such a character as his counsel would claim for him? What is that letter? Not a word in it assuring her of his innocence, — telling her to keep up her heart, for it would all be made right! Not a syllable which could strengthen and comfort his family in their great sorrow! Not a word of reliance upon God, in

that dark hour! But a paltry enumeration of his physical wants, — a little pepper! and a little tea! and so on, through! Gentlemen, I forbear. I submit to you that this is not a letter from an innocent father, the victim of a foul conspiracy, immediately after his imprisonment, to a distressed and anxious child. I will not comment upon it. You will consider with what justice the claim can be made, and how this letter indicates the character of its writer.

Gentlemen, we have been asked to believe, that, if this act was committed by Dr. Webster, it must have been in the heat of blood, provoked by contest, and therefore to be considered as manslaughter. When the counsel said, Would to God that he had rushed out, and exclaimed, "I have killed my brother-man!" — remember, instead, what the prisoner actually did. Remember his plans, which repel the presumption that it could have been done in the heat of blood. I have not thought it necessary to dwell upon the circumstances which imply premeditation, nor do I do so now. It is entirely immaterial whether he premeditated this homicide one day or one minute. If you are satisfied that he did remove Dr. Parkman from this mortal life, however suddenly it was done, if with an instrument likely to cause death, and unprovoked by a blow, then his act is just as much murder as if he had premeditated it for months. We find in it the implied malice of the law. I leave it to you to say, whether you do not find upon the whole evidence the express malice of the law. The treatment of these remains proves incontestably that there was the malice afterwards; for

> "It doth seem too bloody,
> First to cut off the head, then hack the limbs;
> Like wrath in death, and malice afterwards."

I do not know that you could find in the books a better illustration of at least the *implied* malice of the law than this cruel conduct indicates.

Have you any doubt, from all this evidence, that Dr. Webster had an agency in the death of Dr. Parkman? Can you doubt it for a moment? It is not a *possible* doubt that will shield you from your responsibilities, — it must be a *reasonable* doubt. And [turning to the Bench] I invoke Your Honors' instruction to this jury, as to what a reasonable doubt is. It is a doubt, Gentlemen, for which a man can give a good reason. And it is for you to say, upon all this evidence, whether you do entertain that reasonable doubt which is recognized by the law, and which, extended beyond

its fair meaning, would leave society at the mercy of the passionate, the lawless, and the depraved.

Gentlemen, appeals have been made to you, in behalf of the prisoner's family, both in the opening and in the closing arguments of the counsel for the defence. God forbid that we should forget them, though the prisoner did! We will remember them better than he remembered the family of Littlefield, whom he could gratuitously charge with being the author of a homicide, or a conspiracy, which was worse; we will think of them more than he thought of the family of Dr. Parkman, when he was endeavoring to impress upon Mr. Pettee, by a gross and audacious falsehood, that Dr. Parkman had been insane; — taking away from them in their bereavement, if the falsehood had been believed, the consolation of thinking of him, as the proof has shown him to have been, on that fatal morning, in good health of body, his mind undimmed in its intelligence, and his spirits unusually cheerful.

But that family we are not to forget; — that wife, whose partner and protector has been suddenly removed from her companionship; — that invalid daughter, on whom his last thoughts before his fatal contact with the prisoner were most probably centred, as indicated by the purchase of that delicacy for her on Friday; — that daughter to whom his kind and paternal presence made up the daily sunshine of weary hours; but to whom, in his assiduous kindness, he will never come again; — and that only son, who was compelled to hear, in a foreign land, the heart-crushing intelligence that he should see his father's face no more; and who is thus summoned home to enter upon the large responsibilities which his father's death devolves upon him, bereft of paternal guidance and counsel! Are not these to be remembered, in your vindication of public justice?

The family of the prisoner, it is true, are not to be forgotten. Our hearts bleed for them now; but it is one of the great providential penalties of sin, that the innocent must suffer with and for the guilty. In the official experience which has been common to my learned friend and myself, we have often seen the mother, the sister, heart-broken, appealing for mercy for some sinning, erring son or brother. Gentlemen, it is so everywhere; and no man can transgress the laws of God, without involving others in the suffering that must follow. But is that a reason why we should fail to do our duty — compassionately, indeed — yet resolutely and firmly, like men?

It was the remark, Gentlemen, of a great English statesman, that the object of all good government was to obtain a good jury. If in any government this is true, it is especially so in ours, which is "a government of laws, and not of men." The Constitution of this Commonwealth, as I have already remarked to you, has for its first and highest object the protection of life; — the security of human life against the violence of passionate, and the machinations of wicked men. And, Gentlemen, shall it fail of this, its high purpose?

If *you* undertake to exercise the prerogative of *mercy*, — a prerogative which is assigned by that Constitution to another tribunal, — how can you be sure, Gentlemen, what mercy is? I very much doubt, in fact, whether the murders which have so thickened upon us of late, the investigations of which have crowded within the last few months our judicial annals, — I very much doubt, whether here, in Massachusetts, we should have had to deplore them all, but for the weakness of jurors, who, through a false tenderness of conscience, have permitted those proved to be guilty to go unpunished. Remember that great maxim, long honored in other lands, — "*Judex damnatur cum nocens absolvitur*" — the judge is condemned when the guilty is acquitted! — The juror who permits the guilty to escape, convicts himself! If ever there was a case which required the jury to stand firmly up to the discharge of their great duty as citizens, it is here and now. The mercy of a jury may be more effectually exercised by a conviction, oftentimes, than by an acquittal. How can you tell, — who can tell, — how many great crimes might have been spared to humanity, if all the verdicts of our juries heretofore had impressed upon the public mind and the public heart, the certain conviction that judicial punishment follows, like its shadow, detected crime?

I feel, Gentlemen, that there is resting upon you a higher responsibility than ever before rested on twelve men in Massachusetts. Remember that we have had here through these long and weary days, those whose labors will carry this trial and all this mass of proof, unanswered by any explanations on the part of the defendant, into all lands, to be read in all languages, and to be read, Gentlemen, as a memorial of you among all men! — a memorial of the degree of inflexibility and firmness which you shall exhibit in upholding, paramount and supreme, the law under which human life has claimed and enjoyed protection, in this Commonwealth of Massachusetts, since its foundation by the Pilgrims!

The Attorney General concluded his closing argument at ten minutes of five o'clock, P. M. The Chief Justice thereupon addressed the prisoner, as follows: —

JOHN W. WEBSTER, — Before committing this cause to the jury, if you have anything to add to the arguments which have been urged on your behalf by your counsel, anything which you deem material to your defence by way of explaining or qualifying the evidence adduced against you, you are at liberty now to address it to the jury. I feel bound to say to you, however, that this is a privilege of which you may avail yourself or not, at your own discretion.

Professor Webster, upon this, arose, and, in a firm tone and with apparent self-possession, made the following address: — *

I am much obliged to Your Honors for this kind permission to make a statement.

I will not enter into any explanation — though I have desired much to do so — of the complicated net-work of circumstances, which, owing to my peculiar position, the Government has thrown around me, and which for many months has been crushing me. It would require many hours to do so minutely, and I do not know that my strength would be equal to it. But if time were granted to me, if I could show what these people were doing and thinking of at the time they have testified about me, I could explain the facts which have been brought up here against me, which in nine cases out of ten have been completely distorted, and to nine-tenths of which I could probably give a satisfactory answer.

On all the points, testimony had been placed in the hands of my counsel; and my innocence would have been fully established if they had produced it. They were highly recommended to me; and, acting under their direction, I have sealed my lips during my confinement, trusting myself from the first moment entirely to them. But in their superior wisdom they have not seen fit to bring forward the evidence that had been ready prepared for them by me, and which

* This address to the jury, as the Reporter is informed by the prisoner's counsel, was made against their advice, after deliberation and conference upon the point. By way of more formal and impressive representation of its inexpediency and danger, they had even committed their views to writing; and their client had apparently acquiesced in their force and propriety.

would have exonerated me from a variety of these acts; — acts which the Government have brought to bear against me with consummate ingenuity, but which I hope will not have an undue influence with my jury.

This very silence of mine has been construed to my prejudice; my calmness urged as an argument against me; — and these things compel me to speak. I will not allude to many of the charges. There is one which touches me; and that is the letter to my daughter, which has been produced and read against me.

I doubt whether that letter, in which I requested my wife "not to open the bundle," was the first that I wrote my family after my arrest, as I had written two or three long letters before about that time. The inference from the sentence in that letter, which led to the examination of my private papers by the police, was different, very different, from what was intended by me. I can only say, that having seen in one of the daily papers which are allowed to come into the prison, among the various fabrications which were made respecting me, — in one of these prints, I say, I saw a statement that after the disappearance of Dr. Parkman I had bought a quantity of oxalic acid to remove the stains of blood with; and it instantly occurred to my mind that the same parcel had been saved and could be produced.

For several days, Mrs. Webster had wanted some citric acid for domestic purposes; and I had forgotten to bring it so often that she laughed at me for my forgetfulness. On the very day of my arrest, I had borne it in mind, and that afternoon went into Mr. Thayer's apothecary-shop in Bowdoin Square, under the Revere House; and, after stopping there a half an hour or so talking on various topics, I made the purchase of this parcel of citric acid. I waited till the Cambridge hourly came along, and then taking the bundle in my hand, jumped into the omnibus. I went out home, and gave the bundle to my wife, into her own hands, saying, "here is your acid;" and afterwards, when I heard so much said about the bundle, it flashed into my mind in a moment that this was what was referred to. I knew that the possession of the acid would show that it was not oxalic; and hence the request about the bundle — "not to open but to keep it" — had no reference whatever to the notes.

I will say just one thing more, and that is in regard to the search for the papers in my house. When the officers came the first time, they say that they did not find them; that they opened the trunk and examined it, and did not see them.

After they had gone, Mr. Charles Cunningham, who had been there at the time of the search, opened that trunk again; and in looking over the papers found the notes lying there, and, thinking that they had been overlooked, and that the officers might come again, laid them on top of the contents of the trunk, in open sight, just as they were afterwards found, and made a memorandum of it in the presence of a witness.

I wish to point out another circumstance, — a mistake, though, I have no doubt, an unintentional one, on the part of the Rev. Dr. Francis Parkman. I think he did not do me justice in all respects. He certainly spoke of this very subject of the aberration of his brother's mind, or admitted its possibility; and there were many other points in the conversation that were of a favorable nature to me which he did not mention, but which I think he will recollect when I recall the conversation to his mind. He will recollect that he asked me if a common-looking laboring man was with his brother when he came to the College; and he also asked me if he had any lettuce in his hand; and I answered, No, to both these questions. I told him that I did not notice any lettuce.

As to the nitrate of copper spilt on the stairs and floor of the laboratory, — it was spilt accidentally from a quantity used by me in my lectures, between the day of Dr. Parkman's disappearance and my own arrest. It is well known to persons acquainted with chemistry, that I should want such a material in my course. Either in the lecture preceding my arrest, or the one preceding that, I had occasion to show some experiments on the nature of acids and their effects in changing the color of gases, and I prepared a large quantity of the nitric oxide gas. In a two-gallon jar were placed nitric acid and bits of copper, the fumes of which are conveyed into a receiver, and nitric oxide gas is thereby produced. After standing a few hours, it becomes colorless. By the admission of a stream of pure oxygen gas, which may be effected during the lecture, it becomes of a bright orange color, and the gas is changed by this experiment into nitrous acid gas. The blood, too, was wanted for the lectures. By the admission of oxygen gas, the color of dark venous blood is changed immediately to florid red.

And so I might go on explaining a variety of circumstances which have been distorted against me. Many things might have been mentioned, if I had had any thought of their being required; but I had no thought that they would be. I depended on the truth alone to prove my innocence; and I did

not anticipate that any more than the truth would be brought against me.

It has been said that I have been calm. If I have seemed so, I have not been conscious of it. My counsel have pressed me to keep as calm as possible; and my very calmness has been brought to bear against me. In one sense I have been calm. My trust has been in my God, and in my innocence!

In regard to the money, I must say a word. I had the money to pay Dr. Parkman, on Friday the 23d of November. That money I had positively laid by in small sums from time to time to meet this payment, and kept in a small trunk in my house at Cambridge. I took the money out of that trunk that morning; but unfortunately no one can be produced who saw me take it out before I came over to Boston. Therefore I can only give my word that such is the fact.

As to being locked into my rooms: — several years ago, I had been in the habit of having my students have free access to my laboratory, and help me in making my preparations for the lectures; but so many accidents occurred, and they broke so many things, that latterly I had given up the practice altogether, and was in the habit of preparing everything for chemical use in my lectures with my own hands. This is the reason why, when I was engaged in this way, I would have my rooms locked; and it was by no means an unusual thing, as it has been represented, here, to be.

This will serve to give the jury an idea of the perversions, as I must call them, which have been brought forward in this case.

As regards my whereabouts from the time of Dr. Parkman's disappearance, I have put into my counsel's hands satisfactory information, which will account for every day I spent during that week; — for every day and every hour I was absent from home. Every day, from the Friday of the disappearance to the following Friday, I never was absent from my home after nine o'clock at night; and, as to being seen by Mr. Sanderson getting out of the omnibus alone in Harvard Square, it is altogether a mistake. I was at home every night.

I placed some evidence in the hands of my counsel about where I was at different times on Friday, which they have not used. In regard to where I dined that day, I would say that I left the College about three o'clock that afternoon to come up town. I had had no dinner; but, as I walked up towards the omnibus-office, I came to the place at the corner of Hanover street, called Concert Hall, or Brigham's, where I had occasionally been before to get a bite, and I stopped in there

and got a mutton-chop. I waited there some time, then went to Mr. Kidder's, and afterwards took the omnibus, home.

But accident put it into my power to show that I had been at one place on Wednesday evening, of which I notified my counsel. Having occasion to make a little present to a young lady, I went to Munroe's book-store, and bought a copy of Humboldt's new work, Cosmos. I took the book with me, and, as I was going by, stopped in again at Brigham's to get a cup of tea, and thence went to Mr. Cunningham's. I came off in a hurry, and left the parcel and a note behind me. On my arrival, I found that I had forgotten my book. My counsel afterwards sent to Brigham's, and found the book and note in the place where I had left them; and the people there recollected the circumstance, so that I was able to fix that it was Wednesday evening, and where I was that evening; but unfortunately they could not remember the fact of my being there on the other occasion. But, as it has been with me in various other respects, my counsel have not thought proper to mention *this* circumstance. And so I might mention a great many other matters. But I will not detain the Court by detailing them. [The prisoner here sat down; but immediately rose again and added, —]

Will the Court allow me to say one thing more? I have felt more distressed by the production of these various anonymous letters, than, I had almost said, by anything else that has occurred during the trial. And I call my God to witness, — and if it should be the last word that I should ever be allowed to speak, — I positively declare I never wrote those letters. Since they were introduced into the case, one of my counsel has received a letter from this very "Civis," in which the writer says that he wrote the one signed with that name.* A notice has already been inserted in the newspapers, I believe, calling upon him to come forth; but he has not yet shown himself. If he is present here in the court-room, and has a spark of humanity in his breast, I call upon him to come forward and declare himself! [This last sentence was spoken with great emphasis, the prisoner at the same time elevating his voice and looking round the crowded court-room and up to the gallery, with an excited and oratorical air.]

When the prisoner had concluded his address, which occupied about fifteen minutes, the Chief Justice, after a consultation among the members of the Court, arose, and with a voice

* This letter will be found in the Appendix.

greatly disturbed by emotion, and a countenance indicative of sorrow and distress, delivered the following charge to the jury: —

Gentlemen of the Jury, — It is with the deepest sense of the responsibilities which devolve upon this Court, and upon myself as their representative, that I rise to address you upon the most important and interesting subject to which the attention of a jury can ever be called. But the case has been so long under consideration, it has now been brought to such a crisis, the whole of the evidence and the arguments of counsel on both sides being before you, that we feel unwilling, notwithstanding the lateness of the hour, to postpone the performance of our part of this duty to another day, which must necessarily extend the trial into another week; and, therefore, painful, responsible, and laborious as this duty is, we think, upon some deliberation, that it is best now to proceed to the performance of it, in order that you may proceed to consider of your verdict.

For this reason, not because the case is not in the highest degree important and interesting, but on account of its peculiar circumstances, I may be more brief upon some parts of it than I should otherwise be. But it is, after all, mainly a question of fact upon the evidence. The principles of law for which the Court are responsible, and which are applicable to the present case, are few, plain, and simple. I trust I shall be able to state them briefly; and it will be my duty to consider the rules of law by which the case is to be governed, rather than to make any extended examination of the evidence itself.

Gentlemen, some appeals have been made to you upon the solemnity and importance of your duties. They are indeed arduous, but still they are necessary; and every citizen in his turn may be liable to be called on for their performance. But from the cautious manner in which the jury were empanelled, through the application of the appeal made to their consciences by the law for the purpose of excluding all undue influences and securing an unbiassed judgment, and through the right secured to the accused of making peremptory challenges, your minds must already have been more deeply impressed than they could be by any words of mine, with the tender regard which the law attributes to the invaluable right of human life.

We profess to live under a government of laws. By a distribution of those powers, the existence and exercise of which

are essential to the well-being of any civil community, the Constitution of this Commonwealth has intrusted to another department of government, the power of making laws defining crimes and prescribing punishments. For that, courts of justice are not responsible. And, whatever may be the views of all or any of us upon the subject of the punishment appropriated to any offence, it is not our duty to consider it here: but it is our duty to carry the law into effect, and to administer it truly and fairly. It is the appropriate province of legislation to make the law; it is the appropriate province of jurisprudence to expound it and apply it to particular cases. When a person accused of crime is brought before us, we are to consider what the law and evidence are, and whether, in view of both he has rendered himself amenable to public justice; and, if so, to declare it.

But there is another division of duties between the Court and jury, which it is proper to notice. Each has its peculiar duty, and each is responsible for that alone. It is the province of the Court to state clearly the rules of law applicable to the facts and circumstances brought before the jury by the evidence, with the qualifications and limitations which the case may require, to regulate the course of proceeding, to decide what shall or shall not be admitted as legal and competent evidence, and, generally, to regulate the conduct of the trial. But it is for the jury to take such evidence into consideration, to weigh it impartially, to apply their best judgment to the discovery of the truth, and then by their verdict to declare it. This is the province of the jury; and, whilst each department shall keep within its proper boundaries, the law will be administered according to its true theory, and all will be done which seems within the scope of human power, for the detection and punishment of the guilty, and for the security and protection of the innocent.

With these few preliminary remarks, I will now proceed to consider the present case.

This, Gentlemen, is an indictment, charging the prisoner at the bar with the crime of murder. It alleges that Professor John W. Webster, of the Medical College, and Professor in the College at Cambridge, did, on the 23d day of November last, violently make an assault upon Dr. George Parkman, and then and there did deprive him of life by violent means. This is set forth in four different forms or counts, charging the death in several different modes, to which I shall have occasion to allude hereafter; and so the grand jury conclude, that in these modes, or some one of them, this crime was committed.

Homicide, Gentlemen, of which murder is the highest and most criminal species, is of various degrees, according to circumstances. In its largest sense, it is a generic term, embracing every mode by which the life of one man is taken by the act of another. It may be lawful or unlawful. It is lawful when done in lawful war upon an enemy in battle; it is lawful when done by an officer in the execution of justice upon a criminal, pursuant to a proper warrant. It may also be justifiable, and of course lawful, in necessary self-defence. But it is not necessary to dwell on these distinctions; it will be sufficient to ask your attention to the two species of criminal homicide, familiarly known as murder and manslaughter.

In seeking for the sources of our law upon this subject, it is proper to say, that whilst the statute law of the Commonwealth declares (Rev. Stat. c. 125, § 1), "that every person who commits the crime of murder shall suffer the punishment of death for the same," yet it nowhere defines the crimes of murder or manslaughter, with all their minute and carefully-considered distinctions and qualifications. For these, we resort to that great repository of rules, principles, and forms, the common law. This we commonly designate as the common law of England; but it might now be properly called the common law of Massachusetts. It was adopted when our ancestors first settled here, by general consent. It was adopted and confirmed by an early act of the Provincial Government, and was formally confirmed by the provision of the Constitution (ch. 6, art. 6) declaring that all the laws which have heretofore been adopted, used, and approved in the Province or State of Massachusetts Bay, and usually practised on in the courts of law, shall still remain and be in full force until altered or repealed by the legislature. So far, therefore, as the rules and principles of the common law were applicable to the administration of criminal law, and have not been altered and modified by acts of our colonial or provincial government or by the State legislature, they have the same force and effect as laws formally enacted.

By the existing law, as adopted and practised on, unlawful homicide is distinguished into murder and manslaughter.

Murder, in the sense in which it is now understood, is the killing of any person in the peace of the Commonwealth, with *malice aforethought*, either express or implied by law. Malice, in this definition, is used in a technical sense, including not only anger, hatred, and revenge, but every other unlawful and unjustifiable motive. It is not confined to ill-will towards one or more individual persons, but is intended to

denote an action, flowing from any wicked and corrupt motive, a thing done *malo animo*, where the fact has been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty, and fatally bent upon mischief. And therefore malice is implied from any deliberate or cruel act against another, however sudden.

Manslaughter is the unlawful killing of another without malice; and may be either voluntary, as when the act is committed with a real design and purpose to kill, but through the violence of sudden passion, occasioned by some great provocation, which in tenderness for the frailty of human nature the law considers sufficient to palliate the criminality of the offence; or involuntary, as when the death of another is caused by some unlawful act, not accompanied by any intention to take life.

From these two definitions it will be at once perceived, that the characteristic distinction between murder and manslaughter is malice, express or implied. It therefore becomes necessary in every case of homicide proved, and in order to an intelligent inquiry into the legal character of the act, to ascertain with some precision the nature of legal malice, and what evidence is requisite to establish its existence.

Upon this subject, the rule as deduced from the authorities is, that the implication of malice arises in every case of intentional homicide; and, the fact of killing being first proved, all the circumstances of accident, necessity, or infirmity, are to be satisfactorily established by the party charged, unless they arise out of the evidence produced against him to prove the homicide, and the circumstances attending it. If there were, in fact, circumstances of justification, excuse, or palliation, such proof would naturally indicate them. But where the fact of killing is proved by satisfactory evidence, and there are no circumstances disclosed, tending to show justification or excuse, there is nothing to rebut the natural presumption of malice. This rule is founded on the plain and obvious principle, that a person must be presumed to intend to do that which he voluntarily and wilfully does in fact do, and that he must intend all the natural, probable, and usual consequences of his own acts. Therefore, when one person assails another violently with a dangerous weapon, likely to kill and which does in fact destroy the life of the party assailed, the natural presumption is, that he intended death or other great bodily harm; and, as there can be no presumption of any proper motive or legal excuse for such a cruel act, the consequence follows, that, in the absence of all proof to the con-

trary, there is nothing to rebut the presumption of malice. On the other hand, if death, though wilfully intended, was inflicted immediately after provocation given by the deceased, supposing that such provocation consisted of a blow or an assault, or other provocation on his part which the law deems adequate to excite sudden and angry passion and create heat of blood, this fact rebuts the presumption of malice; but still, the homicide being unlawful, because a man is bound to curb his passions, is criminal, and is manslaughter.

In considering what is regarded as such adequate provocation, it is a settled rule of law, that no provocation by words only, however opprobrious, will mitigate an intentional homicide so as to reduce it to manslaughter. Therefore, if, upon provoking language given, the party immediately revenges himself by the use of a dangerous and deadly weapon likely to cause death, such as a pistol discharged at the person, a heavy bludgeon, an axe, or a knife, — if death ensue, it is a homicide not mitigated to manslaughter by the circumstances, and so is homicide by a malice aforethought, within the true definition of murder. It is not the less malice aforethought, within the meaning of the law, because the act is done suddenly after the intention to commit the homicide is formed; it is sufficient that the malicious intention precedes and accompanies the act of homicide. It is manifest, therefore, that the words "malice aforethought," in the description of murder, do not imply deliberation, or the lapse of considerable time between the malicious intent to take life and the actual execution of that intent, but rather denote purpose and design, in contradistinction to accident and mischance.

In speaking of the use of a dangerous weapon, and the mode of using it upon the person of another, I have spoken of it as indicating an intention to kill him, or *do him great bodily harm.* The reason is this. Where a man, without justification or excuse, has caused the death of another by the intentional use of a dangerous weapon likely to destroy life, he is responsible for the consequences, upon the principle already stated, that he is liable for the natural and probable consequences of his act. Suppose, therefore, for the purpose of revenge, one fires a pistol at another, regardless of consequences, intending to kill, maim, or grievously wound him, as the case may be, without any definite intention to take his life, — yet, if that is the result, the law attributes the same consequences to homicide so committed, as if done under an actual and declared purpose to take the life of the party assailed.

I propose to verify and illustrate these positions, by reading a few passages from a work of good authority on this subject, — a work already cited at the bar, — East's Pleas of the Crown, chap. 5, §§ 2, 4, 12, 19, 20.

"Murder is the voluntarily killing any person of malice prepense or aforethought, either express or implied by law: the sense of which word *malice* is not only confined to a particular ill-will to the deceased, but is intended to denote, as Mr. Justice Foster expresses it, an action flowing from a wicked and corrupt motive, a thing done *malo animo*, where the fact has been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty and fatally bent upon mischief. And therefore malice is implied from any deliberate, cruel act against another, however sudden." *(See East, P. C., chap. 5, § 2.)*

"Manslaughter is principally distinguishable from murder in this; that though the act which occasions the death be unlawful, or likely to be attended with bodily mischief, yet the malice, either express or implied, which is the very essence of murder, is presumed to be wanting; and, the act being imputed to the infirmity of human nature, the correction ordained for it is proportionally lenient." *(Sect. 4.)*

"The implication of malice arises in every instance of homicide amounting, in point of law, to murder; and in every charge of murder, the fact of killing being first proved, all the circumstances of accident, necessity, or infirmity, are to be satisfactorily proved by the prisoner, unless they arise out of the evidence produced against him." *(Sect. 12.)*

"Whenever death ensues from sudden transport of passion or heat of blood, if upon a reasonable provocation and without malice, or if upon sudden combat, it will be manslaughter; if without such provocation, or the blood has had reasonable time or opportunity to cool, or there be evidence of express malice, it will be murder." *(Sect. 19.)*

"Words of reproach, how grievous soever, are not provocation sufficient to free the party killing, from the guilt of murder; nor are contemptuous or insulting actions or gestures, without an assault upon the person; nor is any trespass against lands or goods. This rule governs every case where the party killing upon such provocation made use of a deadly weapon, or otherwise manifested an intention to kill, or to do some great bodily harm. But if he had given the other a box on the ear, or had struck him with a stick, or other weapon *not likely to kill*, and had unluckily and against his intention killed him, it had been but manslaughter." *(Sect. 20.)*

The true nature of manslaughter is, that it is homicide mitigated out of tenderness to the frailty of human nature. Every man, when assailed with violence or great rudeness, is inspired with a sudden impulse of anger which puts him upon resistance before time for cool reflection; and if during that period he attacks his assailant with a weapon likely to endanger life, and death ensues, it is regarded as done through heat of blood or violence of anger, and not through malice, or that cold-blooded desire of revenge, which more properly constitutes the feeling, emotion, or passion of malice.

The same rule applies to homicide in mutual combat, which is attributed to sudden and violent anger occasioned by the combat, and not to malice. When two meet, not intending to quarrel, and angry words suddenly arise, and a conflict springs up in which blows are given on both sides without much regard to who is the assailant, it is a mutual combat. And if no unfair advantage be taken in the outset, and the occasion is not sought for the purpose of gratifying malice, and one seizes a weapon and strikes a deadly blow, it is regarded as homicide in heat of blood; and though not excusable, because a man is bound to control his angry passions, yet it is not the higher offence of murder.

We have stated these distinctions, not because there is much evidence in the present case which calls for their application, but that the jury may have a clear and distinct view of the leading principles in the law of homicide. There seems to have been little evidence in the present case that the parties had a contest. There is some evidence tending to show the previous existence of angry feelings; but unless these feelings resulted in angry words, and words were followed by blows, there would be no proof of heat of blood in mutual combat, or under provocation of an assault, on the one side or the other; and the proof of the defendant's declarations, as to the circumstances under which the parties met and parted, as far as they go, repel the supposition of such a contest.

With these views of the law of homicide, we will proceed to the further consideration of the present case. The prisoner at the bar is charged with the wilful murder of Dr. George Parkman. This divides itself into two principal questions, to be resolved by the proof. First, whether the party alleged to have been murdered came to his death by an act of violence inflicted by any person; and if so, secondly, whether the act has been committed by the accused.

Under the first head we are to inquire and ascertain whether the party alleged to have been slain is actually dead; and,

if so, whether the evidence is such as to exclude, beyond reasonable doubt, the supposition that such death was occasioned by accident or suicide, and to show that it must have been the result of an act of violence.

Where the dead body of a person is found whose life seems to have been destroyed by violence, three questions naturally arise. Did he destroy his own life? Was his death caused by accident? — or was it by violence inflicted on him by others? In most instances, there are facts and circumstances surrounding the case, which, taken in connection with the age, character, and relations of the deceased, will put this beyond doubt. It is with a view to this, and in consequence of the high value which the law places upon the life of every individual under its protection, that provision is made for a prompt inquiry into such cases, prior to any question of guilt or innocence. The high and anxious regard of the law for the protection and security of the life of the subject pervades its whole system, and that upon the principles of simple humanity, without reference to the condition or circumstances of individuals. Indeed, you must have perceived, from the whole course of this trial, the extreme tenderness of the law for the rights of human life; as well the life of the deceased, whose death is the subject of this trial, as that of the prisoner, whose own life is put in jeopardy by it. Hence, in case of a sudden and violent death, a coroner's inquest is provided, in order to an inquiry into its true cause, whilst the facts are recent, and the circumstances unchanged. If, on such an inquiry, made by an officer appointed for the purpose, and by a jury acting upon evidence given on oath, it satisfactorily appears that the deceased came to his death by accident or a visitation of Providence, it will have a strong tendency to allay unjustifiable suspicion, and to satisfy and tranquillize the feelings of the vicinity and of the community at large, always deeply interested in such an event. But if, as in the present case, the result of such an early inquiry tends to fasten suspicion on any individual as the guilty cause, then it naturally leads to other proceedings which may vindicate the law, and bring the suspected party to trial, and, if found guilty, to punishment.

The importance of this inquiry into the circumstances of a supposed violent death, and of collecting and preserving the proof of them, will appear from the further consideration of the present case. It is one where the first important and leading fact, proved by uncontested evidence, is, that the person alleged to have been slain, Dr. Parkman, suddenly disap-

peared from his family and home, on Friday the 23d of November last, without any cause known to them, and was never afterwards seen. The theory upon which the prosecution is founded, and to establish which evidence has been laid before you, is, that he was deprived of life in the afternoon of the day mentioned, under such circumstances as lead to a strong belief that his death was caused by an act of violence and by human agency.

This case is to be proved, if proved at all, by circumstantial evidence; because it is not suggested that any direct evidence can be given, or that any witness can be called to give direct testimony upon the main fact of the killing. It becomes important, therefore, to state what circumstantial evidence is; to point out the distinction between that and positive or direct evidence; and to give you some idea of the mode in which a judicial investigation is to be pursued by the aid of circumstantial evidence.

The distinction, then, between direct and circumstantial evidence, is this. Direct or positive evidence is when a witness can be called to testify to the precise fact which is the subject of the issue in trial; that is, in a case of homicide, that the party accused did cause the death of the deceased. Whatever may be the kind or force of the evidence, this is the fact to be proved. But suppose no person was present on the occasion of the death, and of course no one can be called to testify to it,—is it wholly unsusceptible of legal proof? Experience has shown that circumstantial evidence may be offered in such a case; that is, that a body of facts may be proved of so conclusive a character, as to warrant a firm belief of the fact, quite as strong and certain as that on which discreet men are accustomed to act in relation to their most important concerns. It would be injurious to the best interests of society, if such proof could not avail in judicial proceedings. If it were necessary always to have positive evidence, how many criminal acts committed in the community, destructive of its peace and subversive of its order and security, would go wholly undetected and unpunished?

The necessity, therefore, of resorting to circumstantial evidence, if it be a safe and reliable proceeding, is obvious and absolute. Crimes are secret. Most men, conscious of criminal purposes, and about the execution of criminal acts, seek the security of secresy and darkness. It is therefore necessary to use all other modes of evidence besides that of direct testimony, provided such proofs may be relied on as leading to safe and satisfactory conclusions; and, — thanks to a be-

neficent Providence! — the laws of nature and the relations of things to each other are so linked and combined together, that a medium of proof is often furnished, leading to inferences and conclusions as strong as those arising from direct testimony.

On this subject, I will once more ask your attention to a remark in the work already cited, East's Pleas of the Crown, chap. 5, § 11. "Perhaps," he says, "strong circumstantial evidence, in cases of crimes like this, committed for the most part in secret, is the most satisfactory of any from whence to draw the conclusion of guilt; for men may be seduced to perjury by many base motives to which the secret nature of the offence may sometimes afford a temptation; but it can scarcely happen that many circumstances, especially if they be such over which the accuser could have no control, forming together the links of a transaction, should all unfortunately concur to fix the presumption of guilt on an individual, and yet such a conclusion be erroneous."

Each of these modes of proof has its advantages and disadvantages; it is not easy to compare their relative value. The advantage of positive evidence is, that you have the direct testimony of a witness to the fact to be proved, who, if he speaks the truth, saw it done; and the only question is, whether he is entitled to belief. The disadvantage is, that the witness may be false and corrupt, and the case may not afford the means of detecting his falsehood.

But, in a case of circumstantial evidence where no witness can testify directly to the fact to be proved, you arrive at it by a series of other facts, which by experience we have found so associated with the fact in question, as in the relation of cause and effect, that they lead to a satisfactory and certain conclusion; as when foot-prints are discovered after a recent snow, it is certain that some animated being has passed over the snow since it fell; and, from the form and number of the foot-prints, it can be determined with equal certainty, whether it was a man, a bird, or a quadruped. Circumstantial evidence, therefore, is founded on experience and observed facts and coincidences, establishing a connection between the known and proved facts and the fact sought to be proved. The advantages are, that, as the evidence commonly comes from several witnesses and different sources, a chain of circumstances is less likely to be falsely prepared and arranged, and falsehood and perjury are more likely to be detected and fail of their purpose. The disadvantages are, that a jury has not only to weigh the evidence of facts, but to draw just conclusions from them; in doing which, they may be led by preju-

dice or partiality, or by want of due deliberation and sobriety of judgment, to make hasty and false deductions; a source of error not existing in the consideration of positive evidence.

From this view, it is manifest that great care and caution ought to be used in drawing inferences from proved facts. It must be a fair and natural, and not a forced or artificial conclusion; as when a house is found to have been plundered, and there are indications of force and violence upon the windows and shutters, the inference is that the house was broken open, and that the persons who broke open the house plundered the property. It has sometimes been enacted by positive law, that certain facts proved shall be held to be evidence of another fact; as where it was provided by statute, that if the mother of a bastard child give no notice of its expected birth and be delivered in secret, and afterwards be found with the child dead, it shall be presumed that it was born alive and that she killed it. This is a forced and not a natural presumption, prescribed by positive law, and not conformable to the rule of the common law. The common law appeals to the plain dictates of common experience and sound judgment; and the inference to be drawn from all the facts must be a reasonable and natural one, and, to a moral certainty, a certain one. It is not sufficient that it is probable only; it must be reasonably and morally certain.

The next consideration is, that each fact which is necessary to the conclusion must be distinctly and independently proved by competent evidence. I say, every fact necessary to the conclusion; because it may and often does happen, that, in making out a case on circumstantial evidence, many facts are given in evidence, not because they are necessary to the conclusion sought to be proved, but to show that they are consistent with it and not repugnant, and go to rebut any contrary presumption. As in the present case, it was testified by a witness, that, the day before the alleged homicide, he saw Dr. Parkman riding through Cambridge and inquiring for Dr. Webster's house, — having a slight tendency to show that he was then urgently pressing his claim; but not being necessary to the establishment of the main fact, if such witness were mistaken in the time or in the fact itself, such failure of proof would not prevent the inference from other facts, if of themselves sufficient to warrant it. The failure of such proof does not destroy the chain of evidence; it only fails to give it that particular corroboration, which such fact, if proved, might afford.

So to take another instance arising out of the evidence of

the present case. The fact of the identity of the body of the deceased with that of the dead body, parts of which were found at the Medical College, is a material fact, necessary to be established by the proof. Some evidence has been offered, tending to show that the shape, size, height, and other particulars respecting the body, parts of which were found and put together, would correspond with those of the deceased. But, inasmuch as these particulars would also correspond with those of many other persons in the community, the proof would be equivocal and fail in the character of conclusiveness upon the point of identity. But other evidence was then offered, the nature and character of which will be more fully considered hereafter, respecting certain teeth found in the furnace; — designed to show that they were the identical teeth prepared and fitted for Dr. Parkman. Now, if this latter fact is satisfactorily proved, and if it is further proved to a reasonable certainty, that the limbs found in the vault and the burnt remains found in the furnace were parts of one and the same dead body, this would be a coincidence of a conclusive nature to prove the point sought to be established; namely, the fact of identity. Why, then, it may be asked, is the evidence of height, shape, and figure of the remains found, given at all? The answer is, because it is proof of a fact not repugnant to that of identity, but consistent with it, and may tend to rebut any presumption that the remains were those of any other person; and therefore, to some extent, aid the proof of identification. The conclusion must rest upon a basis of facts proved, and must be the fair and reasonable conclusion from all such facts taken together.

The relations and coincidences of facts with each other, from which reasonable inferences may be drawn, are some of a physical or mechanical, and others of a moral nature. Of the former, some are so decisive as to leave no doubt; as where human foot-prints are found on the snow, (to use an illustration already adduced,) the conclusion is certain, that a person has passed there; because we know, by experience, that that is the mode in which such foot-prints are made. A man is found dead, with a dagger-wound in his breast; this being the fact proved, the conclusion is, that his death was caused by that wound, because we know that it is an adequate cause of death, and no other cause is apparent.

We may also take an instance or two from actual trials. A recent case occurred in this Court, where one was indicted for murder by stabbing the deceased in the heart, with a dirk-knife. There was evidence tending to show that the prisoner

had possession of such a knife on the day of the homicide. On the next morning, the handle of a knife, with a small portion of the blade remaining, was found in an open cellar, near the spot. Afterwards, upon a *post mortem* examination of the deceased, the blade of a knife was found broken in his heart, causing a wound in its nature mortal. Some of the witnesses testified to the identity of the handle, as that of the knife previously in possession of the accused. No one, probably, could testify to the identity of the blade. The question, therefore, still remained, whether that blade belonged to that handle. Now, when these pieces came to be placed together, the toothed edges of the fracture so exactly fitted each other, that no person could doubt that they had belonged together; because, from the known qualities of steel, two knives could not have been broken in such a manner as to produce edges that would so precisely match.

So, an instance is mentioned of a trial before Lord Eldon, when a common-law judge, where the charge was of murder with a pistol. There was much evidence tending to show that the accused was near the place at the time, and raising strong suspicions that he was the person who fired the pistol; but it fell short of being conclusive, — of fastening the charge upon the accused. The surgeon had stated in his testimony, that the pistol must have been fired near the body, because the body was blackened, and the wad found in the wound. It was asked, by the judge, if he had preserved that wad; he said he had, but had not examined it. On being requested so to do, he unrolled it carefully, and on an examination it was found to consist of paper, constituting part of a printed ballad; and the corresponding part of the same ballad — as shown by the texture of the paper and the purport and form of stanza of the two portions — was found in the pocket of the accused. This tended to fix the defendant as the person who loaded and fired the pistol.

These are cases where the conclusion is drawn from known relations and coincidences of a physical character. But there are those of a moral nature, from which conclusions may as legitimately be drawn. The ordinary feelings, passions, and propensities under which parties act, are facts known by observation and experience; and they are so uniform in their operation, that a conclusion may be safely drawn, that if a person acts in a particular manner he does it under the influence of a particular motive. Indeed, this is the only mode in which a large class of crimes can be proved. I mean crimes, which consist not merely in an act done, but in the motive

and intent with which they are done. But this intent is a secret of the heart, which can only be directly known to the Searcher of all hearts; and if the accused makes no declaration on the subject, and chooses to keep his own secret, which he is likely to do if his purposes are criminal, such criminal intent may be inferred, and often is safely inferred, from his conduct and external acts.

A few other general remarks occur to me upon this subject, which I will submit to your consideration. Where, for instance, probable proof is brought of a state of facts tending to criminate the accused, the absence of all evidence tending to a contrary conclusion is to be considered, — though not alone entitled to much weight; because the burden of proof lies on the accuser to make out the whole case by substantive evidence. But when pretty stringent proof of circumstances is produced, tending to support the charge, and it is apparent that the accused is so situated that he could offer evidence of all the facts and circumstances as they existed, and show, if such were the truth, that the suspicious circumstances can be accounted for consistently with his innocence, and he fails to offer such proof, the natural conclusion is, that the proof if produced, instead of rebutting, would tend to sustain the charge. But this is to be cautiously applied, and only in cases where it is manifest that proofs are in the power of the accused, not accessible to the prosecution.

To the same head may be referred all attempts on the part of the accused to suppress evidence, to suggest false and deceptive explanations, and to cast suspicion, without just cause, on other persons: all or any of which tend somewhat to prove consciousness of guilt, and, when proved, to exert an influence against the accused. But this consideration is not to to be pressed too urgently; because an innocent man, when placed by circumstances in a condition of suspicion and danger, may resort to deception in the hope of avoiding the force of such proofs. Such was the case often mentioned in the books, and cited here yesterday, of a man convicted of the murder of his niece, who had suddenly disappeared under circumstances which created a strong suspicion that she was murdered. He attempted to impose on the Court by presenting another girl as the niece. The deception was discovered and naturally operated against him, though the actual appearance of the niece alive, afterwards, proved conclusively that he was not guilty of the murder.

One other general remark on the subject of circumstantial evidence is this; that inferences drawn from independent

sources different from each other, but tending to the same conclusion, not only support each other, but do so with an increased weight. To illustrate this, suppose in the case just mentioned of the wad of a pistol consisting of part of a ballad, and the other part in the pocket of the accused. It is not absolutely conclusive that the accused loaded and wadded the pistol himself; he might have picked up the piece of paper in the street. But suppose that by another and independent witness it were proved that that individual purchased such a ballad at his shop; and further, from another witness, that he purchased such a pistol at another shop. Here are circumstances from different and independent sources, bearing upon the same conclusion, to wit,—that the accused loaded and used the pistol; and they, therefore, have an increased weight in establishing the proof of the fact.

I will conclude what I have to say on this subject, by a reference to a few obvious and well-established rules, suggested by experience, to be applied to the reception and effect of circumstantial evidence.

The first is, that the several circumstances upon which the conclusion depends must be fully established by proof. They are facts from which the main fact is to be inferred; and they are to be proved by competent evidence, and by the same weight and force of evidence, as if each one were itself the main fact in issue. Under this rule, every circumstance relied upon as material is to be brought to the test of strict proof; and great care is to be taken in guarding against feigned and pretended circumstances which may be designedly contrived and arranged so as to create or divert suspicion and prevent the discovery of the truth. These, by care and vigilance, may generally be detected, because things are so ordered by Providence,—events and their incidents are so combined and linked together,—that real occurrences leave behind them vestiges, by which, if carefully followed, the true character of the occurrences themselves may be discovered. . . A familiar instance is, where a person has been slain by the hands of others, and circumstances are so arranged as to make it appear that the deceased committed suicide. In a case recorded as having actually occurred, the print of a bloody hand was discovered on the deceased. On examination, however, it was the print of a left hand upon the left hand of the deceased. It being impossible that this should have been occasioned by the deceased herself, the print proved the presence and agency of a third person, and

excluded the supposition of suicide. So where a person was found dead, shot by a pistol-ball, and a pistol belonging to himself was found in his hand, apparently just discharged; indicating death by suicide. Upon further examination, it appearing that the ball which caused the mortal wound was too large for that pistol, the conclusion was inevitable that suicide in the mode suggested must have been impossible.

The next rule to which I ask your attention is, that all the facts proved must be consistent with each other, and with the main fact sought to be proved. When a fact has occurred, with a series of circumstances preceding, accompanying, and following it, we know that these must all have been once consistent with each other; otherwise the fact would not have been possible. Therefore, if any one fact necessary to the conclusion is wholly inconsistent with the hypothesis of the guilt of the accused, it breaks the chain of circumstantial evidence upon which the inference depends; and, however plausible or apparently conclusive the other circumstances may be, the charge must fail.

Of this character is the defence usually called an *alibi;* that is, that the accused was *elsewhere* at the time the offence is alleged to have been committed. If this is true, — it being impossible that the accused could be in two places at the same time, — it is a fact inconsistent with that sought to be proved, and excludes its possibility.

This is a defence often attempted by contrivance, subornation, and perjury. The proof, therefore, offered to sustain it, is to be subjected to a rigid scrutiny, because, without attempting to control or rebut the evidence of facts sustaining the charge, it attempts to prove affirmatively another fact wholly inconsistent with it; and this defence is equally available, if satisfactorily established, to avoid the force of positive, as of circumstantial evidence. In considering the strength of the evidence necessary to sustain this defence, it is obvious that all testimony tending to show that the accused was in another place at the time of the offence, is in direct conflict with that which tends to prove that he was at the place where the crime was committed, and actually committed it. In this conflict of evidence, whatever tends to support the one, tends in the same degree to rebut and overthrow the other; and it is for the jury to decide where the truth lies.

Another rule is, that the circumstances taken together should be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion, and producing in effect a reasonable and moral certainty that the accused, and no one else, com-

mitted the offence charged. It is not sufficient that they create a probability, though a strong one; and if, therefore, assuming all the facts to be true which the evidence tends to establish, they may yet be accounted for upon any hypothesis which does not include the guilt of the accused, the proof fails. It is essential, therefore, that the circumstances taken as a whole, and giving them their reasonable and just weight and no more, should to a moral certainty exclude every other hypothesis. The evidence must establish the *corpus delicti*, as it is termed, or the offence committed as charged; and, in case of homicide, must not only prove a death by violence, but must, to a reasonable extent, exclude the hypothesis of suicide, and a death by the act of any other person. This is to be proved beyond reasonable doubt.

Then, what is reasonable doubt? It is a term often used, probably pretty well understood, but not easily defined. It is not mere possible doubt; because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty;—a certainty that convinces and directs the understanding, and satisfies the reason and judgment, of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law should go further than this, and require absolute certainty, as it mostly depends upon considerations of a moral nature, it would exclude circumstantial evidence altogether.

We will now turn your attention more particularly to the consideration of the present case. The indictment charges the defendant, Dr. John W. Webster, with having committed the crime of wilful murder on the person of Dr. George Parkman, on the 23d of November last; and this is the charge upon which you are called to decide.

In every criminal prosecution, two things must concur: first, a good and sufficient indictment in which the criminal charge is set forth; and, secondly, such charge must be established by the legal proof. The sufficiency of the indictment in substance and form is a matter of law, upon which, if drawn in question, it is the duty of the Court to give an opinion. The general rule is, that no person shall be held to answer to a criminal charge, until the same is fully and plainly, substantially and formally described to him. A good indictment, therefore, is necessary, independent of proof.

This indictment contains four counts, which are four different modes in which the homicide is alleged to have been committed.

To a person unskilled and unpractised in legal proceedings, it may seem strange that several modes of death, inconsistent with each other, should be stated in the same document. But it is often necessary; and the reason for it, when explained, will be obvious. The indictment is but the charge or accusation made by the grand jury, with as much certainty and precision as the evidence before them will warrant. They may be well satisfied that the homicide was committed, and yet the evidence before them leave it somewhat doubtful as to the mode of death; but, in order to meet the evidence as it may finally appear, they are very properly allowed to set out the mode in different counts; and then if any one of them is proved, supposing it to be also legally formal, it is sufficient to support the indictment.

Take the instance of a murder at sea: a man is struck down, — lies some time on the deck insensible, and in that condition is thrown overboard. The evidence proves the certainty of a homicide by the blow, or by the drowning, but leaves it uncertain by which. That would be a fit case for several counts, charging a death by a blow, and a death by drowning, and perhaps a third alleging a death by the joint result of both causes combined.

It may perhaps be supposed, that, in the long and melancholy history of criminal jurisprudence, a precedent can be found for every possible mode in which a violent death can be caused: and it is safer to follow precedents. It is true that these precedents are numerous and various; but it is not true, that, amidst new discoveries in art and science and the powers of nature, new modes of causing death may not continually occur. The powers of ether and chloroform are of recent discovery. Suppose a person should be forcibly or clandestinely held, and those agents applied to his mouth till

insensibility and death ensue. Though no such instance ever occurred before, the guilty agent could not escape.

Of course, Gentlemen, I do not mean to intimate that these supposed agencies were used in the present instance, but allude to them simply by way of illustration. But, if such or any similar new modes of occasioning death may have been adopted, they are clearly within the law. The rules and principles of the common law, just as when applied to steamboats and locomotives, though these have come into existence long since those principles were established, are broad and expansive enough to embrace all new cases as they arise. If, therefore, a homicide be committed by any mode of death, which, though practised for the first time, falls within these principles, and it is charged in the indictment with as much precision and certainty as the circumstances of the case will allow, it comes within the scope of the law and is punishable.

The principle is well stated in East's Pleas of the Crown, chap. 5, § 13:—"The manner of procuring the death of another with malice is, generally speaking, no otherwise material than as the degree of cruelty or deliberation with which it is accompanied may in conscience enhance the guilt of the perpetrator; with this reservation, however, that malice must be of *corporal* damage to the party. And therefore working upon the fancy of another, or treating him harshly or unkindly, by which he dies of fear or grief, is not such a killing as the law takes notice of. But he who wilfully and deliberately does any act which apparently endangers another's life and thereby occasions his death, shall, unless he clearly prove the contrary, be adjudged to kill him of malice prepense." This, the author proceeds to illustrate by a number of remarkable and peculiar cases.

In looking at this indictment, we find that the first count, after the usual preamble, charges an assault and a mortal wound by stabbing with a knife; the second, by a blow on the head with a hammer; and the third, by striking, kicking, beating, and throwing on the ground.

The fourth and last count, which is somewhat new, it will be necessary to examine more particularly. [Here the Chief Justice read the fourth count, as in the indictment, p. 3.]

The Court are all of opinion, after some consideration, that this is a good count in the indictment. From the necessity of the case, we think it must be so, because cases may be imagined where the death is proved, and even where remains of the deceased are discovered and identified, and yet they

may afford no certain evidence of the form in which the death was occasioned; and then we think it is proper for the jury to say that it is by means to them unknown.

We have already seen that a death occasioned by grief or terror cannot in law be deemed murder. Murder must be committed by an act applied to or affecting the person, either directly, as by inflicting a wound or laying poison; or indirectly, as by exposing the person to a deadly agency or influence, from which death ensues. Here the count charges an assault upon the deceased, (a technical term well understood in the law, implying force applied to or directed towards the person of another,) in some way and manner, and by some means, instruments, and weapons, to the jury unknown; and that the prisoner did thereby wilfully and maliciously deprive him of life.

The rules of law require the grand jury to state their charge with as much certainty as the circumstances of the case will permit; and, if the circumstances will not permit a fuller and more precise statement of the mode in which the death is occasioned, this count conforms to the rules of law. I am therefore instructed by the Court to say, that, if you are satisfied upon the evidence that the defendant is guilty of the crime charged, this form of indictment is sufficient to sustain a conviction.

We are next to call your attention to a careful review and consideration of the evidence, to ascertain whether the facts upon which the charges in the indictment are founded are proved beyond reasonable doubt.

In a charge of criminal homicide, it is necessary in the first place, by full and substantial evidence, to establish what is technically called the *corpus delicti*, — the actual offence committed; that is, that the person alleged to be dead is in fact so; that he came to his death by violence, and under such circumstances as to exclude the supposition of a death by accident or suicide, and warranting the conclusion that such death was inflicted by a human agent; — leaving the question who that guilty agent is, to after consideration. The charge is, that Dr. Parkman was killed on the 23d of November last, and this is the question first to be considered.

Some facts on this subject are undisputed; that is, they are either admitted, or proved by evidence so clear that no question is made of them.

It appears that Dr. George Parkman, somewhat peculiar in person and manners, very well known to most persons in this city, and especially in the westerly part of it, left his home in

Walnut street in the forenoon of the day mentioned; that he walked down the street with Mr. Shaw; that he was then in good health and spirits; and that he was traced through various streets during the forenoon up to as late an hour as at least half-past twelve o'clock.

Subsequently to that time, there is evidence tending to show that he was seen going up Court street; that he went to Mr. Holland's store at the corner of Vine and Blossom streets, and there made some purchases and left a small package containing lettuce; that he was next seen in Bridge street by the boys Moore and Prouty; and immediately after, and shortly before two o'clock, was seen by the Messrs. Fuller to approach, and by Dr. Bosworth to go up the front steps of the Medical College.

So far as the precise time of his approach to the College is material, it is for you to judge from the evidence. The two boys, in connection with the testimony of Mrs. Moore, set the time of his passing the corner of Bridge and Fruit streets at ten minutes of two; and the Messrs. Fuller and Dr. Bosworth saw him very shortly subsequent. Taken in connection with the fact that he had appointed to meet Dr. Webster at the College on that day, the conclusion which you are asked by the prosecution to draw, is, that he entered the building at that time. They then insist, upon the evidence, that he never left it alive; and this is a question for your consideration.

The Government have next offered evidence to show, that Dr. Parkman did not call at Mr. Holland's for the article he had left, and did not return to his house that day or night; that the next morning, which was Saturday, Mr. Shaw, a relative, visited the family, who were in great anxiety; that he proceeded to consult a legal friend, and to apply to the police, at whose suggestion a public notice was postponed to the latter part of the forenoon, to see if no intelligence should be obtained by the arrivals of the morning railroad-trains; that in the afternoon a very general search and inquiry were made, as testified to by Kingsley and others; that, in the evening-papers, public notice was given of his disappearance; and that, subsequently rewards were offered for information about him through advertisements and hand-bills.

It is unnecessary to allude, except in a general way, to all the evidence respecting the extent and activity of this search, which appears to have been continued without any material discovery, until Friday the 30th, when certain remains of a dead body were discovered in the Medical College, which led to the arrest of the defendant. On the next day, a more

thorough search at the Medical College led to the discovery of further remains of a human body in the tea-chest and in the furnace, the circumstances of which have been detailed to you by the searching officers, and the medical and other witnesses.

Upon this evidence, Gentlemen, three questions now arise for your consideration and decision. First, were these the remains of the body of Dr. Parkman? Secondly, if so, were they found under such circumstances as to exclude the supposition that he came to his death by accident or suicide, and to warrant the belief that his death was caused by violence? And, Thirdly, if his death were caused by violence, then by whose hand?

Perhaps it may be as well to consider now, as at any other stage, that ground of defence on the part of the prisoner which has been denominated, not perhaps with precise legal accuracy, an *alibi;* that is, that the deceased was seen elsewhere out of the Medical College after the time, when, by the theory of the proof on the part of the prosecution, he is supposed to have lost his life at the Medical College. It is like the case of an *alibi* in this respect, that it proposes to prove a fact which is repugnant to and inconsistent with the facts constituting the evidence on the other side, so as to control the conclusion, or at least render it doubtful, and thus lay the ground of an acquittal. And the Court are of opinion that this proof is material; for, although the time alleged in the indictment is not material, and the act done at another time would sustain it, yet in point of evidence it may become material; and in the present case, as all the circumstances shown on the other side, and relied upon as proof, tend to the conclusion that Dr. Parkman was last seen entering the Medical College, and that he lost his life therein, if at all, the fact of his being seen elsewhere afterwards would be so inconsistent with that allegation, that, if made out by satisfactory proof, we think it would be conclusive in favor of the defendant.

Both are affirmative facts; and the jury are to decide upon the weight of the evidence. When you are called upon to consider the proof of any particular fact, you will consider the evidence which sustains it in connection with that which makes the other way, and be governed by the weight of proof. Proof which would be quite sufficient to sustain a proposition, if it stood alone, may be encountered by such a mass of opposite proof as to be quite overbalanced by it.

In the ordinary case of an *alibi*, when a party charged with

a crime attempts to prove that he was in another place at the time, all the evidence tending to prove that he committed the offence tends in the same degree to prove that he was at the place when it was committed. If, therefore, the proof of the *alibi* does not outweigh the proof that he was at the place when the offence was committed, it is not sufficient.

The witnesses called to prove that they saw Dr. Parkman in the afternoon of the day in question, taken in the order in which they supposed they saw him, are Mrs. Hatch, Mr. Thompson, Mrs. Greenough, Mr. Wentworth, Mr. Cleland, Mrs. Rhoades, and her daughter. It is not necessary to go over their testimony particularly; it is sufficient to allude to it. Mrs. Hatch is not much relied on; her testimony applies to ten or fifteen minutes before two, and therefore scarcely material, whether correct or not. Mr. Thompson, from the registry at East Cambridge, testifies to seeing Dr. Parkman in Causeway street going towards Leverett street ten or fifteen minutes after two. Mrs. Greenough testifies that she saw him about ten minutes before three in Cambridge street, going towards the bridge; Mr. Wentworth, that he saw him in Court street, opposite Mrs. Kidder's, between half-past two and three, going towards Bowdoin Square; Mr. Cleland, in Washington street, going towards Roxbury, between a quarter and half-past three; and Mrs. Rhoades and her daughter, that they saw him in Green street at a quarter-before five, going east, towards Bowdoin Square.

Then what evidence is there in the case opposed to this? You will remember, that notice of Dr. Parkman's disappearance was pretty extensively communicated in the west part of the city on Saturday; that it appeared in the public papers on Saturday afternoon; and that, on Sunday and Monday, a thorough search and extensive inquiry were instituted. The public mind was excited and aroused to the most active vigilance.

It is, perhaps, Gentlemen, somewhat peculiar to our country, but it is well known to all men of observation and experience, that, when a great and appalling event of this kind occurs among us, the public mind and sensibilities are so aroused that the whole community resolves itself into a voluntary inquest. Every one inquires of every other person what he has seen or heard respecting the one absorbing subject; each taxes his recollection, and reports every circumstance, however trifling, which may seem to bear on the question. Many statements no doubt are made, and honestly made, which come to nothing; but, in the multitude of re-

ports and representations, some clue is fallen upon, opening a line of inquiry which leads to the true result. In this manner the memories of all are taxed to remember what they have seen or heard within the last twenty-four hours, or two or three days; and thus many circumstances may be recollected and impressed upon the mind by the great subject which interests every body.

Nearly every one of the above-named witnesses states, that, when the disappearance of Dr. Parkman was made public, the circumstances testified of were brought to their minds. This is quite natural. But the same circumstances which would awaken their attention and impress their memories, would naturally affect the minds of others also. The argument on the other side is, that thousands would have been thus put upon their recollection to say whether they had seen Dr. Parkman abroad; when, where, and under what circumstances.

Perhaps no man of his age and situation was better known in the city, personally, than the deceased. It is obvious, that, if he was seen by these witnesses at the times and places stated by them, he must have gone from one of those places to the other in the intermediate times, and must therefore have been in some of the most public streets of the city, from two to five o'clock in the afternoon; a time of day when, at that season, the streets are perhaps as much thronged as at any other. The question then is, if he had been thus passing through those thronged streets, whether hundreds, perhaps thousands, of persons would not have seen him, many of whom would have recollected the fact when it became so early a subject of general inquiry, and who would have come forward to declare it. Judge for yourselves. If you think, under the circumstances, that this would be the case, the absence of such testimony is to be weighed and considered, and the natural inference drawn from it.

This, however, would be negative testimony; and it is said that negative testimony is less to be relied on than positive. This is in general true, when the witnesses are equally trustworthy; and the reason is, that they are not necessarily contradictory, and that both may be true. One may have noticed and may recollect the fact, and the other not. But where two persons have been placed in such a position, that, if the fact had occurred, they would have had equal means of knowing it, and their attention is equally called to it, and one asserts and the other denies its existence, they are in

their nature contradictory; one or the other must be mistaken in his observation or recollection. In such cases of conflict, the decision of the question must depend upon the number of the witnesses upon one side and the other, and the weight and credit due to their testimony respectively.

There are two considerations always to be kept in view, in weighing evidence of an *alibi*, and they apply equally to this part of the present case.

In the first place, there is the uncertainty, when the observation was hasty and casual, whether, without supposing any intention to mislead, the witness was not mistaken in the person. The other is, that the whole efficiency of the proof depends upon the accuracy of the witness as to the time and place at which the person was seen. And in regard to time, where the question depends upon a short interval, it may be remarked, that there is room for some discrepancy of statement in the variation of the different time-pieces by which the witnesses may have been governed.

In relation to the testimony of these several witnesses, without commenting on it in detail, two remarks occur to me. One is, that not one of them testifies to having spoken to Dr. Parkman, or of having heard his voice, or seen him do anything; their only means of recognition were from casually seeing him pass in the street.

Some evidence was offered for the prosecution, for the purpose of proving that there was a person in town about that time resembling Dr. Parkman; the Court rejected it because it was too remote, and could only prove one of those general facts within common experience which are supposed to be known to jurors without proof. I do not, therefore, allude to this as a fact proved, but to submit to you whether, from your own observation, there are such resemblances in height, shape, and appearance, amongst passengers in the street, that a casual observer would in consequence of them be likely to mistake one person for another.

The other remark I would make upon the testimony of the several witnesses who testify to having seen Dr. Parkman on Friday afternoon, is, that they do not establish any one theory, showing the movement of Dr. Parkman from one place to another, at times succeeding each other at corresponding intervals, unless perhaps it be the testimony of Mr. Wentworth and Mrs. Greenough. On the contrary, the testimony tends to prove him to have been at different places, at different times, during that afternoon; such times and places having no reference to each other.

This is proper evidence to be taken into consideration and weighed by the jury, and to be compared with the evidence tending to prove affirmatively that Dr. Parkman entered the Medical College and lost his life there; for, if that were so, he could not have been abroad afterwards, and the evidence tending to prove it must be a mistake, whatever be the origin and cause of such a mistake. But the question, whether he was so abroad, bears directly upon that proof, and, if established, tends to control and rebut it. And, therefore, if this proof is of such a character as to lead you to a belief that Dr. Parkman was abroad after he left the Medical College, and if, on the evidence, the contrary is not proved beyond reasonable doubt, for the reasons already given we think the case of the prosecution must fail, and that the defendant is entitled to an acquittal.

If the jury should come to the conclusion, that the evidence is not sufficient to prove that Dr. Parkman was abroad out of the Medical College after he entered it, at or shortly before two o'clock, the question recurs, whether he lost his life there; and, if so, whether it was under such circumstances as to lead to the belief that it was by the act of a third person, thereby establishing the *corpus delicti.*

As to the fact and time of his entering the College, perhaps the most direct evidence is found in the testimony of Dr. Bosworth of Grafton, who was called late, and who testifies to his having seen Dr. Parkman on the steps, just entering the door, near two o'clock, on the day named. Whether he came to his death there by an act of violence, inflicted by some one, is then the great question; and this depends mainly upon the fact, whether the parts of a human body found there were the real and actual remains of the body of Dr. Parkman.

The sudden disappearance of a man of known and established habits without apparent cause, and the failure to find him or any trace of him, after diligent search, although they may lead to a strong suspicion that he has come to an untimely end, yet are not alone sufficient proof of his death, because the fact may be accounted for on the hypothesis, (however improbable,) that he may have absconded and eluded all inquiry, or been kidnapped and concealed, and be still alive. But if his dead body be found, it is a fact, in its nature, conclusive.

It has been sometimes said by judges, that a jury ought never to convict in a case of homicide, unless the dead body be found and identified. This, as a general proposition, is

undoubtedly true and correct; and disastrous and lamentable consequences have resulted from disregarding the rule. But, like other general rules, it is to be taken with some qualification. It may sometimes happen that the dead body cannot be produced, although the proof of the death is clear and satisfactory. As in a case of murder at sea, where the body is thrown overboard in a dark and stormy night, at a great distance from land or any vessel; although the body cannot be found, nobody can doubt that the author of that crime is chargeable with murder.

But, if the body can be found and identified, it goes conclusively to one of the facts necessary to be proved,—the death of the person alleged to have been killed. Such proof is relied on in the present case. It is for the jury to judge of it.

It appears, then, from the evidence, that, after the disappearance of Dr. Parkman, and an extensive and unsuccessful search elsewhere, and after several examinations of other parts of the Medical College by police officers and others, in a vault, under a privy connected with the lower laboratory, several limbs and parts of a human body were discovered on Friday, a week after such disappearance; and that, on the next day, Saturday, on a further search in the lower laboratory, other parts of a human body were found in the furnace, in the form of bones partially calcined, and still other parts in a tea-chest covered with tan, with a covering of minerals or fossils on top of the tan.

I refer to places and parts of the building familiarly, because the jury, having taken a view of the building, will easily understand these references. They will recollect that what is called the vault of the privy is, in fact, a corner only of a section of the cellar of the building, and connected with the privy above by the aperture in the seat; the whole section being entirely separated from the residue of the cellar by a solid brick wall, and including within its limits the dissecting-vault, which is also walled in with its own independent walls; the privy vault having thus no separate walls of its own.

Were these parts of one and the same human body, and were they so placed and disposed of as to indicate studied or designed concealment? If they were in fact designedly concealed in order to keep them out of view, as the person who had a motive to conceal one part, would have the same motive to conceal the others, the natural conclusion would be, that all was done by the same person. If the parts did not correspond with each other, they could not have been parts of

one body; they might, perhaps, have been the remains of anatomical subjects.

Indeed, from finding parts of a dead body in or about a medical college, where the study of anatomy is pursued, a very natural impression would be, that they were parts of a body or of bodies used for dissection. Is this, in your judgment, negatived by the evidence?

Two physicians, Dr. Wyman and Dr. Holmes, have testified as to the manner in which this body appears to have been dismembered, and are of opinion that that operation does not appear to have been performed in the manner in which it would have been, by an anatomist for the purpose of demonstration. Dr. Ainsworth says that it is his business to keep an account of all subjects brought to the College for anatomical purposes; and that, the institution having now the sanction of the law for being furnished with the means of obtaining subjects, it is necessary to keep an accurate record of them, and that they in fact, do so. He also says, that all subjects received at the College up to that time are accounted for, without including these remains. He also testifies that it is a uniform custom, when a subject is first brought to the College, and before dissection, to prepare the body, by injecting the vessels with some chemical fluid which will tend to preserve it.

With a view, therefore, of ascertaining whether these remains were parts of an anatomical subject, the attention of the medical witnesses who were called to examine them was turned to that inquiry, — whether the vessels had been so injected; because, it was said, this could be ascertained by chemical analysis. Portions of the blood-vessels were taken out and committed to the examination of Dr. C. T. Jackson, and that late eminent chemist, Dr. Gay, and to Dr. Crossley. In consequence of the lamented death of Dr. Gay, his examinations were not finished, but have since been concluded by Dr. Jackson and Dr. Crossley. They have testified, that, in their opinions, the vessels of this body have not been so injected. Besides, there is evidence showing that there was a distinct vault, designed and adapted for the purpose, into which all remains of anatomical subjects were thrown, and in which these remains, if parts of an anatomical subject, would naturally have been placed.

Then as to their being parts of the same body, — if those portions found in the cellar, those found in the tea-chest, and the calcined portions of bone in the furnace, all coincided with each other as one body, although it would not be conclusive evidence of that fact, it would be consistent with it, and not

repugnant to it. This leads to the more direct and material question, whether these were, in fact, the remains of Dr. Parkman.

There was evidence tending to show, that, when these parts were brought together and laid in juxtaposition, measuring those which were found, and estimating the size of those which were missing, they corresponded in height and figure with those of Dr. Parkman. The result of this analysis and admeasurement are given in the testimony of the medical witnesses, especially of Dr. Wyman, and the report which, without objection, was submitted to you. Mr. Shaw, a relative of Dr. Parkman, who had known him long and intimately, examined these remains, and says they very much resemble those of Dr. Parkman. They corresponded in height and size, and in the color of the hair on the breast and leg; and there was nothing dissimilar about them from what he knew of Dr. Parkman, and he took charge of them as his remains.

Here is one of those cases to which the rules of evidence apply, to which I called your attention in speaking of circumstantial evidence. If this testimony had alone been relied on as proof of identity, though tending to create a strong probability, it would have left that fact still doubtful; because parts of the body were wanting, such as the head, including the features and countenance, — the parts by which the identity of a person is usually established. But, certainly, this is not the only mode in which identity may be proved; and, in this case, had there been marks upon the portions of the body found, and they could have been shown to be natural or artificial marks existing upon the body of Dr. Parkman, they would have tended to make out that point. Then the evidence arising from the teeth is relied on; and if the proof derived from this source is of a more conclusive kind to establish the identity of these remains with those of Dr. Parkman, then the fact that the remains corresponded in height, figure, color, and general appearance, with the person of Dr. Parkman, though not specific and direct enough of itself to prove identity, yet being consistent with and not repugnant to it, would, to that extent, tend to make out that point and corroborate the identification.

You are next called to consider the proof arising from the remains of a set of artificial teeth, found in the furnace, as bearing on this same matter of identity.

I have already turned your attention to the question, whether these different remains were parts of one body, and whether their condition and their situation were such as to

indicate designed concealment; and, if so, whether proof of the identity arising from one portion does not tend in an equal degree to prove the identity of the others. The fleshy portions, as well as the bones of the head and other extremities, and the artificial teeth which we are now about more particularly to consider, were all found, as you will recollect, in the same apartment, or in the appurtenances connected with it; — I mean the lower laboratory. From the furnace standing in that apartment, the coroner and the police officers, as they have told you, took out portions of bone, some partially calcined and chiefly belonging to the head, together with parts of certain blocks of artificial mineral teeth. In the same place, intermingled with the slag, ashes, and the calcined bones, they also found a quantity of gold, so far as separated from the other substances by chemical processes, amounting to about a hundred and fifty grains.

It is certainly an interesting inquiry, whether teeth, under such circumstances, can be identified by those who have constructed and fitted them. The investigation is in some respects like that of fossil remains, the study of which has led to such wonderful discoveries. Through the pursuit of comparative anatomy, such a minute and exact knowledge of the peculiarities of the lower orders of animals has been attained, that persons are able from the examination of a single bone to determine the character of the animal to which it belonged. This is carried still further in human anatomy; and it has been testified to you by Dr. Wyman, who has a high reputation in this branch of science, that, from a small piece of bone, it is practicable to determine the part of the head or body to which it belonged. He has exemplified this by placing together and showing, in the manner which he has particularly described to you, the connection of many of the small pieces of bone belonging to the human head, especially the parts of the jaw, found in the furnace.

In connection with a similar kind of inquiry, your attention may now be properly called to an examination of the evidence arising from the discovery of these mineral teeth. It comes mainly from Dr. Keep and Dr. Noble.

Dr. Keep testifies, that about three years ago he made and fitted a set of teeth for Dr. Parkman, a set for each jaw, consisting of manufactured artificial teeth, formed in combinations of three blocks to each jaw, and set upon gold plates fitted and adjusted to the jaws. He states that several natural teeth and stumps remained, to which, as well as to the natural shape and peculiarities of the jaws, it was necessary that the

plates should be adjusted and fitted. The gold had melted away; but the teeth, composed of a material not easily acted on by fire, remained, preserving more or less of their original shape. Dr. Keep had also retained, and has produced here, marked with Dr. Parkman's name, the metallic moulds in which the plates were formed.

But it is not necessary to restate Dr. Keep's testimony particularly. The question is, whether he is able by these means and by his own memory to identify them as the teeth which he fitted for Dr. Parkman. He is of opinion that he can; and he gives you the means which he used, and, generally, the grounds and reasons for his opinion that these are the teeth of Dr. Parkman. You will judge of their weight, and of the credit due to this testimony. If it satisfies you beyond reasonable doubt that they were the teeth worn by Dr. Parkman, it would have a strong tendency to prove the identity of the remains. You will recollect the fact that Dr. Keep saw him wearing them within a week or two of his disappearance, and the evidence arising from the condition of the teeth when they were found, tending to show that they had not been exposed suddenly to the action of heat, but that they were placed in the fire surrounded by some other substance, and heated gradually; — an inference tending to prove, in connexion with other circumstances, that the head was placed in the furnace with the teeth then in it.

Dr. Noble was an assistant of Dr. Keep at that time, and worked on the teeth which he made for Dr. Parkman; and, as far as he goes, he confirms Dr. Keep. Dr. Morton was called on the other side; and, on the whole, is of opinion that there is not enough in these blocks of teeth to enable a dentist who made them to identify them. Drs. Harwood, Codman, and Tucker, all dentists, are of a contrary opinion, and believe that the maker could identify such teeth. They all respectively give you the reasons for their opinions, which you will duly weigh and consider. You are to determine from all the evidence whether those were the teeth of Dr. Parkman, worn by him at the time when he entered the College, and whether they belonged to the same body with the other remains. If you shall be of opinion that they did so belong, it will have a strong tendency, with the other evidence before you, to prove the fact of the death of Dr. Parkman.

The other positions taken by the prosecution in regard to the proof of the *corpus delicti*, are, that Dr. Parkman entered the College apparently well, intending to return immediately

and take the parcel at the grocery on his way home to his dinner; and that, if he came to his death at the College, it was not by accident or the visitation of Providence, because there would have been no motive on the part of any body to prevent an immediate knowledge of the fact, or to conceal the body. It appears to us, therefore, that proof of the *corpus delicti*, or actual death of the party by an act of violence, in the present case, must depend principally upon proof of the identity of these remains. If this is not made out to the satisfaction of the jury, beyond reasonable doubt, then there is no sufficient proof that the dead body found was that of Dr. Parkman; and the proof of the *corpus delicti*, as offered by the prosecution, fails.

But if this is satisfactorily proved, then the next question for the jury to consider is, By whom this crime, this act of criminal homicide, was committed; and whether it was the act of the prisoner at the bar, as charged in the indictment?

It is conceded, or not contested, that, on the day of the alleged homicide, Friday the 23d of November, Dr. Webster lectured to his class at the Medical College, it being the last lecture for that week, and the lectures for the ensuing week after that of Tuesday being also suspended on account of Thanksgiving. He himself stated to several witnesses, that he called at Dr. Parkman's house on the morning of that Friday, and made an appointment to meet him at the Medical College, after his lecture, to pay or to settle with him. The defendant also stated to Dr. Francis Parkman and several other witnesses, that he did meet Dr. Parkman at that time, and paid him $483 and some cents.

The evidence is quite conclusive that they met, and that no other person was present. Dr. Webster stated, that he left the Medical College at three o'clock; and, after stopping at various places, went home in the omnibus. There is, however, some evidence that he was at the College at a later hour. Mr. Preston, a medical student, states that as he was passing out of the dissecting-room, — the low wing or outbuilding attached to the west end of the College, where students are constantly in the habit of practising dissection, — at about six o'clock, he saw Dr. Webster going into the shed at the east end.

I do not think it necessary to allude to all the material facts, as they took place in the order of time from the day of the disappearance of Dr. Parkman to the following Friday, when the remains were discovered in the vault under the privy. The search was commenced on Satur-

day, and continued with unabated activity till that discovery was made.

Perhaps it may be important to refer to the interview between the defendant and one of the relatives of the deceased, Mr. S. Parkman Blake, his nephew. It took place on Monday morning, between ten and eleven, at the Medical College, when Mr. Blake called on him at his apartments there, to inquire into the circumstances of his interview with his uncle, Dr. George Parkman. He found the door locked; but through the assistance of Mr. Littlefield the janitor, who went round the back way, he was admitted and saw Dr. Webster, and mentioned his purpose. Dr. Webster again stated to him the appointment, the meeting, the payment of the note, ($483 and some cents,) the hasty departure of Dr. Parkman, and other incidents which you will recollect.

On the same day as Mr. Blake's interview, search was made in the Medical College by Mr. Kingsley and a police-officer, and again on Tuesday, by him in company with three other officers; but perhaps the search was not very thorough, because the officers seem not to have had much expectation of finding anything there. But, by Wednesday, every part of the premises had been looked through, except the privy vault before described. There was no other access to be obtained to this, as you recollect, (besides the opening through the seat above,) except by taking up the floor, or breaking a hole through the brick partition wall in the lower basement. On Friday this last expedient was adopted in the manner stated to you, at great length, by various witnesses, and these several limbs and parts of a human body were discovered, nearly, but not directly, under the seat in the privy. Notice of this was immediately given to several of the professors, police-officers, and others; and as no one, in the ordinary course of things, had access to the privy but Dr. Webster, it was thought to raise a sufficient presumption against him to warrant his arrest, and he was accordingly arrested and brought to Boston, — first to the jail, and afterwards to the College, under circumstances fully detailed to you by the witnesses.

With regard to the conduct and manner of the defendant at the time of his arrest, and since, it strikes us that no unfavorable inference against him of much force, can be drawn from them. Such are the various temperaments of men, and so rare the occurrence of the sudden arrest of a person upon the charge of a crime so heinous, that, who of us can say how an innocent or a guilty man ought, or would be likely to act in

such a case? — or that he was too much or too little moved for an innocent man? Have you any experience, that an innocent man, stunned under the mere imputation of such a charge, though conscious of innocence, will always appear calm and collected; or that a guilty man, who, by knowledge of his danger, might be somewhat braced up for the consequences, would always appear agitated? — or the reverse? Judge you concerning it. The facts are before you regarding his conduct and language at the time in question, and at various times. They are a part of the evidence; but it strikes us that they cannot be very important. If the evidence is sufficient without them, this species of evidence is unnecessary; if not, then the inferences to be drawn from language, conduct, and behavior, seem not of sufficient weight to give any conclusive effect to the other proofs.

But the evidence mostly relied on by the prosecution to prove that this homicide was committed by the prisoner, consists in his transactions at the College previously to and at the time of the alleged homicide, and more especially to the discoveries made there after the arrest on Friday night, Saturday, and afterwards. To this evidence we refer you, without detailing it particularly, to be weighed and considered with reference to the rules and principles already stated in regard to circumstantial evidence; and it is for you to draw such natural and fair inference from it, as its force requires.

In thus submitting the evidence to you without special comment, or designating the testimony of each witness, I pass over the observations which have been made upon the testimony of Littlefield. It is undoubtedly important, and bears upon many parts of the case; but I am not aware that the conclusion depends much upon his testimony alone. He did acts and suggested inquiries, which led to the discovery of facts and circumstances; but the facts and circumstances themselves, thus described, constitute the substance of the evidence. But the credit of witnesses is with you; his has been much sifted by cross-examination, and you will give such weight to it as you think it is entitled to. It is not impeached in the ordinary way, by proving bad character or conflicting statements. Consider whether it is weakened or corroborated by his manner, by his statements concerning himself and his motives, and by its correspondence, or otherwise, with the other evidence; and give to it such weight as in your judgment it deserves.

But, although homicide is proved, I have already stated there may be criminal homicide which is not murder, when

it is mitigated to manslaughter by heat of blood. But where one intentionally and voluntarily destroys the life of another, and there is no mitigating evidence, either in the testimony offered to convict, or in that given in defence to show heat of blood from adequate provocation or in mutual combat, malice is implied. Here we can perceive no evidence of mitigating circumstances. There is nothing apparent in the evidence to prove any blow, assault, or personal conflict. Indeed, the statement made by the defendant to several of the witnesses, to the effect that they met, that payment was hastily made, and that then they parted, negatives the supposition of any such conflict. But this statement, made perhaps in the hope of shielding himself from any conviction, ought not to be considered conclusive against him, if there were other evidence of the fact, of which we can perceive none.

We have already stated, that malice may be either express or implied. It is express, when there is evidence of previous design and purpose in the language, acts, or conduct of the accused. Homicide by poison, for instance, must necessarily be murder by express malice, because it carries with it evidence of design and the preparation of means.

There are two theories or views of this case, upon which it is placed by the counsel conducting the prosecution, upon one or either of which, it is contended by them, it amounts to murder. One is, that it was murder by express malice; that is, a homicide in pursuance of a previous purpose and design. The other is, that if such previous design is not proved, still if a voluntary killing is proved satisfactorily, and there are no circumstances of justification, excuse, or mitigation, it is murder by implied malice. It becomes therefore necessary to look at the evidence in both of these aspects.

It may be observed in the outset, that it is not necessary to a conviction of murder, to prove that the defendant seduced the deceased to the College with the intent to take his life; yet, if that is proved, all consideration of implied malice is laid out of the case, because it is murder by express malice.

The theory on the part of the Government is, that Dr. Parkman was the creditor of Dr. Webster, and held two notes against him; that one was given as early as 1842, for four or five hundred dollars; that afterwards, in 1847, another note was given, payable in four years, towards which Dr. Parkman advanced a further sum, sufficient to make his whole advance eight hundred dollars and upwards, and other friends of Dr. Webster contributed enough to make twenty-four hundred dollars; for all which a note was given, made payable to Dr.

Parkman, for the benefit of the other lenders and himself. But, though the smaller note was included in the larger, yet it was agreed that the smaller should not be given up, but remain payable according to its terms; and Dr. Parkman gave Dr. Webster a stipulation by memorandum in writing, that, when the smaller note was paid, it should be deemed payment to that amount on the larger. If this were so, then you perceive he held two notes, one due to himself for his own use, and already payable; the other payable to himself for his own benefit and the benefit of others, but not due for a considerable time.

The prosecution urge still further, that Dr. Parkman had pressed for the payment of his own part of the debt rather earnestly; that Dr. Webster had put him off from time to time; that the season had come round when Dr. Webster was to receive his annual stipend for lectures to medical students; that Dr. Parkman had expected to receive his pay at that time, and from that source, and that he endeavored to obtain the money arising from the sale of tickets from Mr. Pettee, the common agent of the medical professors for the disposal of tickets; that this fact was communicated by Mr. Pettee to Dr. Webster; that on Monday evening Dr. Parkman called at the Medical College in a state of some excitement, and urged Dr. Webster very strongly for payment; and that he finally put him off until Friday. There was some evidence, that, in the interval, to wit, on Thursday, Dr. Parkman, after inquiring at the toll-house for Dr. Webster and not finding him, went to Cambridge and inquired for his house; but whether he found him, or of what took place there, there is no evidence.

For the evidence respecting these notes and the pecuniary relations and transactions between the parties, you have an account on paper found in Dr. Webster's possession, drawn up by his friend, Mr. Cunningham, apparently at his request, and stating these transactions particularly. You are also referred to the two notes and the other memoranda found in Dr. Webster's possession after his arrest, with cancellation and other marks and figures on the notes.

Then the suggestion on the part of the prosecution is, that Dr. Webster called at Dr. Parkman's house in the morning, and said, that, if Dr. Parkman would come to the Medical College at half-past one, he would pay him; that this was done to induce Dr. Parkman to come there without the intention or the means of paying him; that he had not the means, and did not in fact pay him; and that his object and motive were

to get possession of these notes wrongfully and without payment; that Dr. Parkman did go, pursuant to the arrangement; that Dr. Webster, instead of being prepared to pay his debt, took measures to destroy the life of his creditor, with a view of getting possession of his note or notes without payment; that he did get possession of both notes, and falsely cancelled and marked them as "paid," and falsely gave out that he had paid $483.64, as the amount due on them; and that his motive to the homicide was this purpose of plunder. If this is proved to your satisfaction, undoubtedly it is a case of express malice. If established, I cannot distinguish it from the case of property found in the possession of one charged with the robbery of that property from another. Such possession made out by proof beyond reasonable doubt, tends to show, in both cases, that plunder was the object of the crime.

Then the question is, Are these facts proved? I have already referred you to the proof relied on, respecting these notes and pecuniary transactions. The fact, that these two notes were found by an officer, on a search-warrant, in the custody of Dr. Webster at his house in Cambridge, marked in his hand "paid,"—if proved, is regarded by the Court as one of great importance and very material in the chain of circumstantial evidence. The testimony is, that this search was made in consequence of an intimation in a letter from the prisoner to his daughter, to request her mother to take care of a package he had given to her a day or two before, and not open it. It may be that this letter did not refer to these papers, but, as he states, to the citric acid; and the term used in the letter is not, "package," but, "bundle,"—which he desired his wife not to open. But, in one aspect, it is immaterial whether his letter referred to those papers or not; because the papers themselves, and the custody in which they were found, furnish the material evidence. If the letter did refer to these papers, it might have a little additional importance, as manifesting a consciousness that the discovery of them would be hazardous to him; and so, by showing an attempt at concealment, might bring his case within the rule stated, that any endeavor to suppress proof, or alter the true state of facts in the case, is to operate against the accused. Still, if it led to a search, in consequence of which they were found, these papers found in his custody are to have the same effect as though the letter had in fact referred to them.

Then you are to consider the evidence upon the question, whether Dr. Webster had the means of paying, and did in fact pay, upon that occasion, $483.64, or any sum whatever.

This he stated to various persons, and the same statement was found embodied in a memorandum taken from his wallet. If that was false and put forth to deceive, it is a fact important and material to this part of the case.

Under this head you will bear in mind the transactions between Dr. Webster and Mr. Pettee. Mr. Pettee testifies to the payments which he had made to Dr. Webster, they being all receipts for his tickets, and also to the efforts of Dr. Parkman to stop the money in his hands, which he communicated to Dr. Webster. He testified that he paid Dr. Webster, on the 9th of November, $275.90; on the 14th of November, $195; on the 16th, $30, to his order through Mr. Littlefield; and on the 23d, $90 to himself, in a check on the Freeman's Bank. These payments, except that of the $30, correspond in dates and amounts (with the further exception of $150 for $195, November 15th) with deposits made by him in the Charles River Bank, as appears from the testimony of Mr. Dana the cashier, and from his own bank-book.

There is one circumstance in this part of the case which seems significant; and that is, that the $90 paid on the morning of that Friday was probably not used in making up the $483.64 alleged to have been paid on that day, because a check of the same amount, on the Freeman's Bank, was deposited by Dr. Webster on the next day, and credited to his account, in the Charles River Bank at Cambridge. Another fact, testified of by Mr. Pettee, deserves consideration. He says that he does not know whether he communicated to Dr. Webster all that Dr. Parkman said of him, but that, when he went to the Medical College on Friday morning, he told Dr. Webster that Dr. Parkman had called on him several times to know if he had funds of his; that he told Dr. Webster that he did not wish to have any trouble with Dr. Parkman, and for that reason had come to pay the money over to him; and that Dr. Webster thereupon said, "You will have no further trouble with Dr. Parkman, for I have settled with him."

From this and the other evidence in the case, you will consider whether the $483.64 was in fact paid, or whether the defendant's representation to that effect was false.

It was my intention to examine somewhat particularly the testimony respecting the account the defendant gave of this payment, and of his interview with Dr. Parkman. It was mentioned by several witnesses, and alluded to shortly in his own memorandum. Perhaps the first statement made to Mr. S. Parkman Blake, to whose evidence I have already referred,

plates should be adjusted and fitted. The gold had melted away; but the teeth, composed of a material not easily acted on by fire, remained, preserving more or less of their original shape. Dr. Keep had also retained, and has produced here, marked with Dr. Parkman's name, the metallic moulds in which the plates were formed.

But it is not necessary to restate Dr. Keep's testimony particularly. The question is, whether he is able by these means and by his own memory to identify them as the teeth which he fitted for Dr. Parkman. He is of opinion that he can; and he gives you the means which he used, and, generally, the grounds and reasons for his opinion that these are the teeth of Dr. Parkman. You will judge of their weight, and of the credit due to this testimony. If it satisfies you beyond reasonable doubt that they were the teeth worn by Dr. Parkman, it would have a strong tendency to prove the identity of the remains. You will recollect the fact that Dr. Keep saw him wearing them within a week or two of his disappearance, and the evidence arising from the condition of the teeth when they were found, tending to show that they had not been exposed suddenly to the action of heat, but that they were placed in the fire surrounded by some other substance, and heated gradually; — an inference tending to prove, in connexion with other circumstances, that the head was placed in the furnace with the teeth then in it.

Dr. Noble was an assistant of Dr. Keep at that time, and worked on the teeth which he made for Dr. Parkman; and, as far as he goes, he confirms Dr. Keep. Dr. Morton was called on the other side; and, on the whole, is of opinion that there is not enough in these blocks of teeth to enable a dentist who made them to identify them. Drs. Harwood, Codman, and Tucker, all dentists, are of a contrary opinion, and believe that the maker could identify such teeth. They all respectively give you the reasons for their opinions, which you will duly weigh and consider. You are to determine from all the evidence whether those were the teeth of Dr. Parkman, worn by him at the time when he entered the College, and whether they belonged to the same body with the other remains. If you shall be of opinion that they did so belong, it will have a strong tendency, with the other evidence before you, to prove the fact of the death of Dr. Parkman.

The other positions taken by the prosecution in regard to the proof of the *corpus delicti*, are, that Dr. Parkman entered the College apparently well, intending to return immediately

and take the parcel at the grocery on his way home to his dinner; and that, if he came to his death at the College, it was not by accident or the visitation of Providence, because there would have been no motive on the part of any body to prevent an immediate knowledge of the fact, or to conceal the body. It appears to us, therefore, that proof of the *corpus delicti*, or actual death of the party by an act of violence, in the present case, must depend principally upon proof of the identity of these remains. If this is not made out to the satisfaction of the jury, beyond reasonable doubt, then there is no sufficient proof that the dead body found was that of Dr. Parkman; and the proof of the *corpus delicti*, as offered by the prosecution, fails.

But if this is satisfactorily proved, then the next question for the jury to consider is, By whom this crime, this act of criminal homicide, was committed; and whether it was the act of the prisoner at the bar, as charged in the indictment?

It is conceded, or not contested, that, on the day of the alleged homicide, Friday the 23d of November, Dr. Webster lectured to his class at the Medical College, it being the last lecture for that week, and the lectures for the ensuing week after that of Tuesday being also suspended on account of Thanksgiving. He himself stated to several witnesses, that he called at Dr. Parkman's house on the morning of that Friday, and made an appointment to meet him at the Medical College, after his lecture, to pay or to settle with him. The defendant also stated to Dr. Francis Parkman and several other witnesses, that he did meet Dr. Parkman at that time, and paid him $483 and some cents.

The evidence is quite conclusive that they met, and that no other person was present. Dr. Webster stated, that he left the Medical College at three o'clock; and, after stopping at various places, went home in the omnibus. There is, however, some evidence that he was at the College at a later hour. Mr. Preston, a medical student, states that as he was passing out of the dissecting-room, — the low wing or outbuilding attached to the west end of the College, where students are constantly in the habit of practising dissection, — at about six o'clock, he saw Dr. Webster going into the shed at the east end.

I do not think it necessary to allude to all the material facts, as they took place in the order of time from the day of the disappearance of Dr. Parkman to the following Friday, when the remains were discovered in the vault under the privy. The search was commenced on Satur-

or implied malice, or manslaughter. They simply tend to prove, if established, a guilty participation in the homicide, and a motive and an attempt to conceal it, and come within the rules of circumstantial evidence already stated.

It was suggested that slight circumstances are sometimes sufficient to prove identity; and it was contended on the part of the prosecution, and a witness was called to prove, that a pi ce of twine or cord with which a part of the remains was tied was identical with a quantity found in Dr. Webster's ro m. Gentlemen, whoever undertook to destroy or conceal th se remains, whether the defendant or any other person, undoubtedly had access to the rooms, and would use all means within his reach to accomplish his object. That somebody had the intention of concealing or destroying these remains, seems manifest from the condition in which they were found. The same person who had the motive to do the one, probably did all that was done towards either; and the same person who tied up a part of the body, found and used the cord. This slight circumstance, therefore, if proved, seems to have but little tendency towards determining whether it was done by the defendant, or any other person.

By thus referring to the various circumstances in general terms, and not dwelling on them, I do not intend to withdraw them from your consideration. But time admonishes me that I must draw to a close.

There is one circumstance which was dwelt upon with some earnestness by the prosecuting officer, which ought not, in the opinion of the Court, to be considered as of any weight against the defendant; that is, that he waived an examination in the Police Court, and thereby declined, instead of having sought, a judicial inquiry, in the first instance. But what is the purpose of an examination in the Police Court? It is to find whether there is *prima facie* evidence to warrant a commitment. The result can have no other effect, nor be used elsewhere. It is often customary, under the advice of the best counsel, to waive a preliminary examination. The magistrate would not go into a thorough one, in a case like the present, because the object is simply to ascertain whether a warrant shall issue for the commitment of the accused; the offence not being a bailable one. His waiving an examination, therefore, seems to us immaterial; more especially, as there had been an inquest charging him with the crime. [After a slight consultation with the judges.] I am now told that no inquest had been returned at that time; but that, we think, is immaterial. There was sufficient evidence to hold the party for trial; and that was all that was required.

Then, Gentlemen, I must ask your attention to the question of the anonymous letters. If an accused person takes measures to divert attention from himself, and especially if he attempts to fix suspicion upon others, it is one of those circumstances arising out of human conduct which manifests a consciousness of his own guilt. But the fact must be first proved with reasonable certainty; and unless, in the present case, it is proved beyond reasonable doubt that the prisoner wrote these letters, especially the "Civis" letter, they are not material, and have no bearing upon the question of his guilt. If proved, they would merely tend to add some corroboration to other proofs. But if the "Civis" letter actually were written by him, you will judge whether he was placed in such a situation as to be induced to write it, though not conscious of being himself guilty. An innocent man may be so placed, where there are strong circumstances of suspicion against him, that, without actual guilt, he may attempt to ward off proof. With regard to the other two letters, the proof seems to us to be slight. You will judge for yourselves, upon the evidence, whether they, or either of them, were written by the defendant; and, if so, draw such inferences from the fact as the case will warrant: otherwise, you will lay them out of the case.

Then there is one other point, Gentlemen, to which it is necessary for me to ask your attention; and that is to the evidence of character. There are cases of circumstantial evidence, where the testimony adduced for and against a prisoner is nearly balanced, in which a good character would be very important to a man's defence. A stranger, for instance, may be placed under circumstances tending to render him suspected of larceny or other lesser crime. He may show, that, notwithstanding these suspicious circumstances, he is esteemed to be of perfectly good character for honesty in the community where he is known; and that may be sufficient to exonerate him. But where it is a question of great and atrocious criminality, the commission of the act is so unusual, so out of the ordinary course of things and beyond common experience, — it is so manifest that the offence, if perpetrated, must have been influenced by motives not frequently operating upon the human mind, — that evidence of character, and of a man's habitual conduct under common circumstances, must be considered far inferior to what it is in the instance of accusations of a lower grade. Against facts strongly proved, good character cannot avail. It is therefore in smaller offences, in such as relate to the actions of daily and common life, as when one is charged with pilfering and

stealing, that evidence of a high character for honesty would satisfy a jury that he would not be likely to yield to such a temptation. In such case, where the evidence is doubtful, proof of character may be given with good effect.

But still, even with regard to the higher crimes, testimony of good character, though of less avail, is competent evidence to the jury, and a species of evidence which the accused has a right to offer. But it behooves one charged with an atrocious crime like this of murder to prove a high character, and, by strong evidence, to make it counterbalance a strong amount of proof on the part of the prosecution. It is the privilege of the accused to put his character in issue or not. If he does, and offers evidence of good character, then the prosecution may give evidence to rebut and counteract it. But it is not competent for the Government to give in proof the bad character of the defendant, unless he first opens that line of inquiry by evidence of good character.

Gentlemen, I am sensible that there are so many facts and such a mass of evidence here, that it is quite impossible that many things should not be omitted. I shall feel rejoiced if I have stated such of the main considerations in this case as shall enable you to come to a true and just conclusion. Many things press upon my mind which I intended to mention; but I am not aware that they are essential, and I think I have taken as much time as I ought to take.

Gentlemen, we finally commit this case to your serious consideration. Weigh it under all the rules of law we have endeavored to explain. You have been called upon and set apart for this high duty, conformably to the laws. First, the names of those only are placed in the jury-box, who are thought best qualified by capacity and experience to judge between their fellows. Then, a large number were drawn by lot for this special service. From these you have been selected, under circumstances best calculated to constitute a tribunal, — in the language of the declaration of rights, — "as free, impartial, and independent, as the lot of humanity will admit."

And, Gentlemen, when it is said that we may err, it is true. But it is nothing more than to say that we are human. On a subject where absolute certainty cannot be obtained, where moral certainty must govern, it is always possible to fall into error. All that we can hope to do, — you in your department, and we in ours, — is conscientiously to exercise the best powers of our minds; to give all the weight to the evidence which it deserves, and no more; and to weigh carefully and

impartially that presented on both sides. Then, though we may come to a result which some future event may show to have been erroneous, much as we shall regret it, yet a consciousness of having done our duty will sustain us.

I commend this cause to your most careful consideration. Take sufficient time; weigh the evidence; and give such a verdict as will satisfy your own judgments and your own enlightened consciences, and we can have no doubt that it will be a true one.

The Chief Justice concluded his charge very shortly before eight o'clock; and, the jury having withdrawn to consider of their verdict, the Court took a recess till a quarter of eleven o'clock, P. M.

At that hour the prisoner was again put to the bar, and the jury entered to take their seats upon the panel. The Court having directed the clerk to inquire if they had agreed upon their verdict, Mr. Wilde addressed them as follows: —

"Gentlemen of the Jury, have you agreed upon your verdict? Who shall speak for you?"

Some of the jury having replied, — "The Foreman;" the clerk then addressed the prisoner and the foreman: —

"John W. Webster! hold up your right hand! — Foreman! look upon the prisoner!

"What say you, Mr. Foreman? — is John W. Webster, the prisoner at the bar, guilty, or not guilty?"

Foreman. — GUILTY!

Clerk. — Gentlemen of the Jury, hearken to your verdict as the Court have recorded it! You, upon your oaths, do say, that John W. Webster, the prisoner at the bar, is guilty: so you say, Mr. Foreman; so, Gentlemen, you all say.

The prisoner, who upon the entrance of the jury had turned deadly pale, but who had stood up with a firm bearing to receive the verdict of the jury, immediately upon its announcement, grasped the rail in front of him, and slowly sank down into his seat. Dropping his head, he rubbed his eyes beneath his spectacles with a trembling and convulsed motion as if to wipe away tears, and remained in that position a few moments, till Mr. Merrick went up and addressed to him some private communication. Presently the Chief Justice directed the crier to adjourn the Court to Monday morning, and the prisoner was remanded.

TWELFTH DAY.—*Monday, April 1st.*

THE SENTENCE OF THE PRISONER.

The Court having met agreeably to adjournment, and the prisoner's counsel having signified, as was understood, that they had no wish for delay for the purpose of urging legal grounds in arrest of judgment, Professor Webster was placed at the bar to receive his sentence.

The Attorney General thereupon rose and moved for judgment, as follows:—

May it please Your Honors:

The prisoner at the bar, at the January term of the Municipal Court, in this county, was indicted by the grand jury for the crime of wilful murder. On that indictment, according to the provisions of the law, the prisoner was arraigned, and pleaded "Not guilty." Counsel of his own selection, capable and faithful, were assigned to him by the Court, to assist in preparing and conducting his defence. The issue then joined has been presented to a jury almost of his own selection. Every aid has been rendered him by counsel, in his defence, that could be rendered; and that jury have found him guilty of the charge. It now becomes my most painful duty to move, that the sentence which the law of this Commonwealth affixes to this offence should be passed upon the prisoner.

Mr. Wilde the clerk, by direction of the Court, then addressed the prisoner:—"John W. Webster! have you anything to say, why sentence of death should not be pronounced upon you, according to law?"

The prisoner, upon the call of his name, arose, and, placing his hands upon the bar in front of the dock, looked calmly towards the bench. He seemed as if disposed to speak; but, after a bow, again resumed his seat, without doing so.

The Chief Justice, with an utterance at times quite interrupted by emotion, then addressed the prisoner as follows:—

JOHN W. WEBSTER:—

In meeting you here for the last time to pronounce that sentence which the law has affixed to the high and aggravated offence of which you stand convicted, it is impossible, by language, to give utterance to the deep consciousness of responsibility, to the keen sense of sadness and sympathy,

with which we approach this solemn duty. Circumstances, which all who know me will duly appreciate, but which it may seem hardly fit to allude to in more detail, render the performance of this duty, on the present occasion, unspeakably painful. At all times, and under all circumstances, a feeling of indescribable solemnity attaches to the utterance of that stern voice of retributive justice which consigns a fellow-being to an untimely and ignominious death; but when we consider all the circumstances of your past life, your various relations to society, the claims upon you by others, the hopes and expectations you have cherished, and contrast them with your present condition and the ignominious death which awaits you, we are oppressed with grief and anguish; and nothing but a sense of imperative duty imposed on us by the law, whose officers and ministers we are, could sustain us in pronouncing such a judgment.

Against the crime of wilful murder, of which you stand convicted, — a crime at which humanity shudders, — a crime everywhere and under all forms of society regarded with the deepest abhorrence, — the law has denounced its severest penalty, in these few and simple, but solemn and impressive words: —

"Every person who shall commit the crime of murder shall suffer the punishment of death for the same."

The manifest object of this law is the protection and security of human life, the most important object of a just and paternal government. It is made the duty of this Court to declare this penalty against any one who shall have been found guilty, in due course of the administration of justice, of having violated this law. It is one of the most solemn acts of judicial power which an earthly tribunal can be called upon to exercise. It is a high and exemplary manifestation of the sovereign authority of the law, as well in its stern and inflexible severity, as in its protecting and paternal benignity. It punishes the guilty with severity, in order that the right to the enjoyment of life, — the most precious of all rights, — may be more effectually secured.

By the record before us, it appears that you have been indicted, by the grand jury of this county, for the crime of murder; alleging that on the 23d November last, you made an assault on the person of Dr. George Parkman, and, by acts of violence, deprived him of life, with malice aforethought. This is alleged to have been done within the apartments of a public institution in this city, the Medical College, of which you were a professor and instructor, upon the person of a man

of mature age, well known, and of extensive connections in this community, and a benefactor of that institution.

The charge of an offence so aggravated, under such circumstances, in the midst of a peaceful community, created an instantaneous outburst of surprise, alarm, and terror, and was followed by a universal and intense anxiety to learn, by the results of a judicial proceeding, whether this charge was true. The day of trial came; a Court was organized to conduct it; a jury, almost of your own choosing, was selected in the manner best calculated to insure intelligence and impartiality; counsel were appointed to assist you in conducting your defence, who have done all that learning, eloquence, and skill could accomplish, in presenting your defence in its most favorable aspects; a very large number of witnesses were carefully examined; and, after a laborious trial, of unprecedented length, conducted, as we hope, with patience and fidelity, that jury have pronounced you "Guilty."

To this verdict, upon a careful revision of the whole proceedings, I am constrained to say, in behalf of the Court, that they can perceive no just or legal ground of exception.

"Guilty!" How much, under all the thrilling circumstances which cluster around the case and throng our memories in the retrospect, does this single word import! The wilful, violent, and malicious destruction of the life of a fellow-man, in the peace of God and under the protection of the law; — yes, of one in the midst of life, with bright hopes, warm affections, mutual attachments, strong, extensive, and numerous, making life a blessing to himself and others!

We allude thus to the injury you have inflicted, not for the purpose of awakening one unnecessary pang in a heart already lacerated, but to remind you of the irreparable wrong done to the victim of your cruelty, in sheer justice to him whose voice is now hushed in death, and whose wrongs can only be vindicated by the living action of the law. If, therefore, you may at any moment think your case a hard one, and your punishment too severe, — if one repining thought arises in your mind, or one murmuring word seeks utterance from your lips, — think, oh! think of him, instantly deprived of life by your guilty hand; then, if not lost to all sense of retributive justice, if you have any compunctious visitings of conscience, you may perhaps be ready to exclaim, in the bitter anguish of truth, — "I have sinned againt Heaven and my own soul; my punishment is just; God be merciful to me, a sinner!"

God grant that your example may afford a solemn warning

to all, especially to the young! May it impress deeply upon every mind the salutary lesson it is intended to teach; to guard against an indulgence of every unhallowed and vindictive passion; to resist temptation to any and every selfish, sordid, and wicked purpose; to listen to the warnings of conscience, and yield to the plain dictates of duty; and whilst all instinctively shrink with abhorrence from the first thought of assailing the life of another, may they learn to reverence the laws of God and society, designed to secure protection to their own!

We forbear, for obvious considerations, from adding such words of advice as may be sometimes thought appropriate, on occasions like this. It has commonly been our province, on occasions like the present, to address the illiterate, the degraded, the outcast, whose early life has been cast among the vicious, the neglected, the abandoned; who have been blessed with no means of moral and religious culture; who have never received the benefits of cultivated society, nor enjoyed the sweet and ennobling influences of home.

To such a one, a word of advice upon an occasion so impressive may be a word fitly spoken, and tend to good. But in a case like this, where the circumstances are all reversed, no words of ours could be more efficacious than the suggestion of your own better thoughts, to which we commend you.

But as we approach this last sad duty of pronouncing sentence, which is indeed the voice of the law, and not our own, yet in giving it utterance, we cannot do it with feelings of indifference, as a formal and official act. God forbid that we should be prevented from indulging and expressing these irrepressible feelings of interest, sympathy, and compassion, which arise spontaneously in our hearts! and we do most sincerely and cordially deplore the distressing condition into which crime has brought you. And though we have no word of present consolation or of earthly hope to offer you, in this hour of your affliction, yet we devoutly commend you to the mercy of our Heavenly Father, with whom is abundance of mercy, and from whom we may all hope for pardon and peace.

And now, nothing remains but the solemn duty of pronouncing the sentence which the law affixes to the crime of murder, of which you stand convicted, *which sentence is* — [The Court, jury, members of the bar, and audience rising,] —

That you, JOHN W. WEBSTER, *be removed from this place, and detained in close custody in the prison of this county; and thence taken, at such time as the Executive Government*

of this Commonwealth may by their warrant appoint, to the place of execution, AND THERE BE HUNG BY THE NECK UNTIL YOU ARE DEAD.

AND MAY GOD, OF HIS INFINITE GOODNESS, HAVE MERCY ON YOUR SOUL!

At the conclusion of the sentence, the prisoner, who all through the Chief Justice's address had preserved a composed and firm demeanor, resumed his seat, and, leaning his head against the bar, appeared to give way freely to tears.

After a few minutes of solemn silence, the Court directed the prisoner to be remanded, and the crier to make proclamation of adjournment.

HEARING UPON THE APPLICATION FOR A WRIT OF ERROR.

Pursuant to notice previously served upon the Attorney General, an application was made, on the 4th of May, succeeding the sentence, to *Mr. Justice Fletcher*, then holding the jury term of the Supreme Judicial Court for Suffolk County, for the issuing of a writ of error on behalf the prisoner.

Messrs. Merrick and *Sohier* appeared for the petitioner; the *Attorney General* and *Mr. Bemis*, for the Commonwealth.

At the suggestion of His Honor, that the application had better be deferred, and made to the Court *in bank*, which would meet in a few weeks for law-hearings for Suffolk, the hearing was postponed till the 12th of June.

SUPREME JUDICIAL COURT.

LAW SESSION, JUNE 12th, 1850.

Present the whole Court, consisting of

Hon. LEMUEL SHAW, *Chief Justice.*
Hon. SAMUEL S. WILDE, }
Hon. CHARLES A. DEWEY, } *Associate*
Hon. THERON METCALF, } *Justices.*
Hon. RICHARD FLETCHER, }

Pursuant to the previous arrangement, the application of *John W. Webster*, for the issuing of a writ of error upon the judgment rendered against him in this Court, on the first day of April last, was this day taken up.

Hon. Pliny Merrick, *Charles B. Goodrich*, and *Edward D. Sohier, Esqs.*, appeared on behalf of the application; and *Hon. John H. Clifford*, Attorney General, and *George Bemis, Esq.*, on behalf of the Commonwealth.

At the opening of the case, *Mr. Merrick* rose and moved the Court, as follows:—

May it please Your Honors,

It is the wish of the Petitioner, that *Charles B. Goodrich, Esq.*, should participate in the argument upon the present application for a writ of error, in connection with his previous counsel. Mr. Goodrich is now present, and prepared, with the leave of the Court, to render that service in his behalf.

I, therefore, respectfully request Your Honors to permit the usual course of proceedings to be so far modified, that after the grounds upon which this application is made, and the several propositions which we shall endeavor to maintain in its support shall have been stated and explained by Mr. Sohier, Mr. Goodrich may be allowed to address an argument to the Court upon the sufficiency of the reasons set forth in the petition for the allowance of the writ.

The Chief Justice having signified the consent of the Court, under the circumstances, to the allowance of the motion, *Mr. Sohier* thereupon proceeded to read, first, the Petition for the writ of error, including the Assignment of Errors and Affidavit, and then the copy of Record of this and the Municipal Courts, as follows:—

Suffolk, ss.

Supreme Judicial Court, March Term, A. D. 1850.

JOHN W. WEBSTER, *Plaintiff in Error*,

vs. THE COMMONWEALTH, *Defendant.*

And now, John W. Webster, heretofore the defendant in a certain indictment for an alleged murder, whereon judgment was rendered against him at this present March Term of this Honorable Court, comes and prays the Court here that a Writ of Error may issue on the judgment aforesaid, returnable to this Honorable Court at its present term, on such day as the Court may direct; to the end that certain errors in the proceedings and judgment of the Court on the indictment aforesaid may be corrected, and that this Honorable Court

will cause to be done in the premises what of right and according to the law of the land ought to be done.

JOHN W. WEBSTER.

Suffolk, ss.

Supreme Judicial Court, March Term, A. D. 1850.

JOHN W. WEBSTER, *Plaintiff in Error*,
vs. THE COMMONWEALTH, *Defendant.*

ASSIGNMENT OF ERRORS.

On this third day of May, eighteen hundred and fifty, the said John W. Webster comes, by Edward D. Sohier and Pliny Merrick, his Attorneys, and says, that in the record and proceedings of this Court, in the case of the Commonwealth vs. said Webster, in which judgment was rendered at the present term of said Court, to wit, on the first day of April current, and also in the giving the judgment aforesaid, there is manifest error in this, to wit:—

1st. That the said Supreme Judicial Court did not acquire jurisdiction of the accusation against him, the said Webster.

2d. Also, that the indictment and the matters therein contained are not sufficient in law to warrant any judgment against the said John W. Webster, — because it does not and cannot judicially appear from any matter or thing before this Court, that the Municipal Court of the city of Boston accepted or acted upon the indictment, Commonwealth vs. said John W. Webster.

3d. Also, that it does not and cannot judicially appear to the Supreme Judicial Court aforesaid, from any matter or thing before it in the record and proceedings, that the said Municipal Court of the City of Boston made an adjudication directing the time when the said indictment should be entered at, and have day in, the said Supreme Judicial Court.

4th. Also, that the said Municipal Court of the City of Boston did not fix and adjudicate that the said indictment should be entered at, and have day in, the said Supreme Judicial Court at a fixed or other certain time, when it could be judicially known that the said Supreme Judicial Court would be in session.

5th. Also, that if the Municipal Court of the City of Boston did fix and adjudicate that the said indictment should be entered at a fixed and certain time, when it was judicially known to the said Municipal Court that said Supreme Judicial Court would be in session, yet that said indictment was not in fact entered on said day in the Supreme Judicial Court.

6th. Also, that it is not, and cannot from any matter or thing in the said Supreme Judicial Court, be judicially known to said Supreme Judicial Court, that the said John W. Webster was served with any order or decree, or copy of such order or decree, of the said Municipal Court of the City of Boston, fixing the time when the said indictment should be entered in the said Supreme Judicial Court.

7th. Also, that no order or decree of the said Municipal Court of the City of Boston, fixing the time when said indictment should be entered in the said Supreme Judicial Court, was ever legally served upon the said John W. Webster, so that in fact the said Webster was not legally transferred from the said Municipal Court of the City of Boston to the said Supreme Judicial Court.

8th. Also, that there is error in this: that it appears by the record aforesaid, that the judgment aforesaid has been given for the said Commonwealth against the said John W. Webster; whereas, by the law of the land, the judgment aforesaid ought to have been given for the said John W. Webster against the said Commonwealth.

9th. That neither the sentence pronounced, nor the judgment rendered by this Honorable Court on the indictment aforesaid, is warranted by, or in accordance with, the laws of this Commonweath, but that each is contrary thereto.

And the said John W. Webster prays that the judgment aforesaid, for the errors aforesaid, may be reversed, annulled, and altogether held for nothing; and that he may be restored to all things which he hath lost by occasion of said judgment.

EDWARD D. SOHIER,
Of Counsel for said JOHN W. WEBSTER.

Annexed to the petition and assignment of errors, was the following affidavit:

I, John W. Webster, on oath declare and say, that the foregoing petition and assignment of errors to be filed therewith, are not intended by me for the mere purpose of procuring delay in the execution of the judgment therein mentioned, but because I am advised by counsel assigned me by the Court, that in their opinion the said errors assigned are of such grave importance that it is proper that I should have them presented to the Supreme Court for its decision.

J. W. WEBSTER.

Subscribed and sworn to before me, on this 3d day of May, 1850.

CHARLES A. WELCH,
Justice of the Peace.

The Copy of Record of this Court, after setting out the Term of the Court and the Indictment as on page 1, *ante*, proceeds as follows:—

"This indictment was found at the Municipal Court of the city of Boston, begun and holden at said Boston, within and for the county of Suffolk, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty, and returned into said Court on the twenty-sixth day of said January, and thence transmitted and certified to this Court, and filed in the clerk's office on the thirtieth day of said January, and thereupon here entered of record on the same thirtieth day of January, during the last November Term of this Court.

And on said indictment is indorsed a certificate in the words and figures following, to wit:—

'COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss.

I, Thomas W. Phillips, clerk of the Municipal Court of the city of Boston, do hereby certify, that this indictment was returned into said Court by the grand jurors of the Commonwealth of Massachusetts attending said Court, on the twenty-sixth day of January, A.D. eighteen hundred and fifty.

I further certify that a true copy of this indictment, certified by the clerk of said Municipal Court, was served upon John W. Webster, now in custody in the common jail in the city of Boston, by the sheriff of the county of Suffolk, on the 26th day of January, 1850. I also certify that a certified copy of an order of said Municipal Court, notifying said Webster that this indictment would be entered at the Supreme Judicial Court now in session, in the city of Boston, hath been served upon said Webster by the sheriff of the county of Suffolk. This copy was served on said Webster upon the 26th day of January, 1850.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Municipal Court, this twenty-ninth day of January, in the year of our Lord eighteen hundred and fifty. THOMAS W. PHILLIPS,

[Seal.] *Clerk of said Municipal Court.*'

And, at said November Term of this Court, said John W. Webster was set to the bar; and, being demanded how he would acquit himself concerning the premises in the indictment above specified and charged upon him, he said he was not guilty, and thereof put himself on the country.

Pliny Merrick and Edward D. Sohier, Esquires, were assigned as counsel for the prisoner. Thence the indictment was continued unto the present term.

And now, on the nineteenth day of March, in the year of our Lord eighteen hundred and fifty, in this term, on which day the Court is holden by the Honorable Chief Justice, and Justices Wilde, Dewey, and Metcalf, by adjournments from day to day, from the fifth day of March aforesaid, the said John W. Webster is set to the bar to be tried.

A jury is empanelled, viz. :—

Robert J. Byram, Foreman ; and Fellows, to wit,— Thomas Barrett, John Borrowscale, James Crosby, John E. Davenport, Albert Day, Joseph Eustis, Daniel T. Fuller, Benjamin H. Greene, Arnold Hayward, Frederick A. Henderson, and Stephen A. Stackpole ; who, being sworn to speak the truth of and upon the premises, on their oaths do say, that the said John W. Webster is guilty.

And now, afterwards, on the first day of April, in the year of our Lord eighteen hundred and fifty, the Court being holden by adjournment, and the Chief Justice and Justices Wilde, Dewey, Metcalf, and Fletcher, being present, and the prisoner being placed at the bar, the Attorney General moves that sentence of death may be given against him. Upon which it is demanded of the said John W. Webster if he has anything to say wherefore the justices here ought not, upon the premises and verdict aforesaid, to proceed to judgment against him ; who nothing further says.

Whereupon, all and singular the premises being seen and understood, it is considered by the Court, *that the said John W. Webster be taken to the jail from whence he came, and thence to the place of execution, and there be hanged by the neck until he be dead.*

A true copy, as appears of record.

Attest, Geo. C. Wilde, *Clerk.*"

The Copy of the Record of the Municipal Court, after setting out the Term of the Court and the caption of the indictment, proceeds as follows :—

" And now, at the present January Term, and on the twenty-sixth day of said January, the grand jurors of the Commonwealth of Massachusetts, attending the Municipal Court of the city of Boston, found and returned into said Municipal Court an indictment, in which John W. Webster, of Cambridge, in the county of Middlesex, gentleman, is charged with the murder of George Parkman, alleged to have been

committed by said Webster at said city of Boston, on the twenty-third day of November, A. D. eighteen hundred and forty-nine.

And now, on the twenty-sixth day of January, A. D. eighteen hundred and fifty, the said Municipal Court passed the following order:—

'It is ordered by the Court, that the sheriff of Suffolk County notify John W. Webster, now in custody in the common jail in the county of Suffolk, that the indictment this day returned into said Municipal Court by the grand jurors of the Commonwealth of Massachusetts, in which said Webster is charged with the murder of George Parkman, will be transmitted to and entered in the Supreme Judicial Court, now in session in the city of Boston and county of Suffolk.

And it is further ordered, that said sheriff deliver to said Webster a copy of said indictment, certified by the clerk of said Municipal Court; which copy, so certified, is herewith delivered to said sheriff.'

'And on the twenty-sixth day of January, A. D. eighteen hundred and fifty, the following return is made and indorsed by the sheriff of our county of Suffolk, upon the original order issued in this case:—

'*Suffolk, ss.* *Boston, January* 26, 1850.

In obedience to the within order, I this day notified the within-named John W. Webster, as required by said order, by giving to said Webster, in hand, a certified copy of the within order; and I also at same time gave to said John W. Webster, in hand, the certified copy of the indictment mentioned within. JOSEPH EVELETH,

Sheriff of Suffolk County.'

Notice of the finding and return of this indictment against said Webster, and that it would be certified and transmitted to, and entered in, the Supreme Judicial Court, now in session in said city of Boston, was forthwith given to the Chief Justice of the Supreme Judicial Court by the clerk of said Municipal Court.

And on the thirtieth day of January, A. D. eighteen hundred and fifty, the aforesaid original indictment against said Webster was transmitted to, certified, and entered in, said Supreme Judicial Court, by the clerk of said Municipal Court, on said thirtieth day of January,—said Supreme Judicial Court being then in session in our said city of Boston, within and for said county of Suffolk.

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss.

I, Thomas W. Phillips, clerk of the Municipal Court of the city of Boston, do hereby certify, that the foregoing is a true copy from the records of said Municipal Court now in my custody.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Municipal Court, this thirtieth day of April, A. D. eighteen hundred and fifty.

THOMAS W. PHILLIPS,
Clerk of said Municipal Court."

Mr. Sohier next read the following copy of the order of notice served upon the prisoner, (the counsel for the Government denying its admissibility, but consenting to its being read *de bene esse*): —

MUNICIPAL COURT OF THE CITY OF BOSTON.

26th day of January, 1850.

It is ordered by the Court, that the sheriff of Suffolk County notify John W. Webster, now in custody in the common jail in the county of Suffolk, that the indictment this day returned into said Municipal Court, by the grand jurors of the Commonwealth of Massachusetts, in which said Webster is charged with the murder of George Parkman, will be transmitted to and entered in the Supreme Judicial Court, now in session, in the city of Boston and county of Suffolk.

And it is further ordered, that said sheriff deliver to said Webster a copy of said indictment, certified by the clerk of said Municipal Court; which copy, so certified, is herewith delivered to said sheriff.

Attest: THOMAS W. PHILLIPS,
Clerk of the Municipal Court of the City of Boston.

A true copy.

Attest: JOSEPH EVELETH,
Sheriff of Suffolk County.

Mr. Sohier then proceeded to state the grounds of the application, as follows: —

As the Court has extended to this defendant the extraordinary indulgence of being heard by additional counsel, I will simply, and, by way of preface merely to the argument, classify the alleged errors, and refer to those provisions of the statutes of the Commonwealth, from a non-compliance with which said errors have arisen.

There are two general grounds of alleged error, on which the prisoner has petitioned for this writ: these are, —

First, That this Court never acquired any jurisdiction, either of the cause or over the person of the defendant.

Second, That neither the sentence pronounced, nor the judgment rendered by this Court, was in conformity with the law of the Commonwealth.

The particular errors assigned, which come under the first head, are, —

1. It does not appear from anything before the Court or from any record in existence, that the Municipal Court ever *adjudicated* that the indictment in this case should be entered in the Supreme Judicial Court.

2. If it does appear by the record that the Municipal Court did adjudicate and determine that the indictment should be entered in the Supreme Judicial Court, yet the Municipal Court did not, by its adjudication, *fix the day* on which the entry should be made.

3. If the Court should be of opinion that the record does show an adjudication that the indictment should be entered in the Supreme Judicial Court on a particular and fixed day, yet the record of this Court shows that the indictment *was not so entered on such day.*

4. It does not appear from anything before the Court, that the defendant was *ever served with legal process*, notifying him that the indictment would be entered in the Supreme Judicial Court, and of the day of such entry.

The first class of errors go to the jurisdiction of the Court.

The Supreme Judicial Court have no longer original jurisdiction over indictments for capital offences. Since the statute of 1844, chap. 44, § 4, all such indictments in the county of Suffolk are made returnable, in the first instance, to the Municipal Court; and whatever jurisdiction attaches to the Supreme Judicial Court, only vests at a subsequent period, and upon compliance with certain preliminary formalities.

By the statute just cited, § 4: —

"If the grand jury, attending at any term of the municipal court, shall find and return to the court any indictment for any crime punishable with death, if the person accused be not in custody, process shall be forthwith issued for the arrest of the party charged with such offence, and the party so charged shall, as soon as may be, be served with a copy of the indictment by the sheriff, or his deputy, with an order of court giving notice to the accused that the indictment will be en-

tered at the supreme judicial court, next to be holden in and for said county of Suffolk, or at any intermediate time before the next term, when said supreme judicial court shall be in session in said county, and notice of such indictment shall also be forthwith given to the chief or first justice of that court, by the clerk of said municipal court; and the said clerk shall transmit and certify the original indictment to the supreme judicial court, at the next term thereof, or at any intermediate time when said supreme judicial court shall be in session in said county, where it shall be entered, and the said supreme judicial court shall then and there have full cognizance and jurisdiction thereof, and the same proceedings shall be had, as if the said indictment had been found and returned in said supreme judicial court."

Now, by this statute, certain preliminary proceedings are first to be had in the Municipal Court, in relation to a transfer, — first, *of the indictment;* and secondly, *of the custody of the person of the accused:* and it is only upon a compliance with these, that this Court shall have as "full cognizance and jurisdiction thereof," as if the indictment "had been found and returned in said Supreme Judicial Court."

We shall submit, that thus much at least should appear to have been done by the Municipal Court: — an adjudication that the indictment shall be entered in this Court; and an adjudication that it shall be so entered on a certain fixed day before the next term thereof, (if, as was the case in the present instance, this Court should be in session at the time of finding the indictment.) Furthermore, this Court can only know of these preliminary proceedings by a record; and the record of the Municipal Court should also show that the defendant had been legally notified, by proper process, of the time and fact of such entry.

All that was before this Court, at the arraignment and at the trial, was the original indictment, with the certificate thereon of the clerk of the Municipal Court which has been read, as it appears on the record of this Court. The whole of this certificate, excepting so much thereof as certifies the identity of the indictment, is a mere nullity. The clerk is not a certifying officer, except so far as the law gives him express authority to certify. The record itself, or an exemplification of it, is the only source from which this Court can judicially know that the Municipal Court has taken the proper course to confer jurisdiction upon it under the statute. A clerk's certificate is worthless for this purpose.

The record of the Municipal Court which has been pro-

duced here, only states that said Court passed an order that the sheriff should notify this defendant, "that the indictment will be transmitted to and entered in the Supreme Judicial Court *now in session in the county of Suffolk;*" but there is *no decree* that the indictment shall be so entered.

If the above order be tantamount to an adjudication or decree, then the adjudication virtually is, that the indictment be entered *on that very day* on which the decree was passed; which the record shows was not complied with; and this non-compliance furnishes our third ground of error, to the jurisdiction. We say *on that very day*, because this Court was in session on that day; and it could not be judicially known to the Municipal Court that the Supreme Judicial Court would be in session after that day. But the indictment was not entered in this Court for a long time after that day; namely, not until the 30th of January.

As to the fourth error insisted upon under the first head,— that the defendant was never served with legal process, notifying him when the indictment would be entered in this Court, — the copy actually served upon him is now before the Court. It will be seen that it is only signed by the clerk, but is not under the seal of the Municipal Court.

If this order is in the nature of a writ, it is null, because it does not bear the seal of the Court from which it issued, as is required by the Constitution of the Commonwealth, chap. 6, art. 5. By that, "all writs, issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from whence they issue; they shall bear test of the first justice of the court to which they shall be returnable, who is not a party, and be signed by the clerk of such court."

If the order is but a *process* issuing from the Municipal Court, — and this much we think must be conceded, — then it is void for want of a seal; as the statute of 1843, chap. 7, § 7, directs, that all "precepts, warrants, processes," &c., issuing from said Court, shall be under its seal.

The particular errors insisted upon under the second general head are these: —

First, That neither the judgment nor sentence express where the execution of the sentence shall take place.

Second, That the judgment restricts the execution of the prisoner from being consummated in one of the places authorized and assigned by law.

By the record of this Court, which I have just read, it appears that the sentence says, "It is considered by the Court

that the said John W. Webster be taken to the jail whence he came, and thence to the place of execution, and there be hanged by the neck until he be dead."

Now by the Revised Statutes, chap. 139, §§ 11 and 13, it is provided, upon this point, as follows:—

"SECT. 11. When any person shall be convicted of any crime, for which sentence of death shall be awarded against him, the clerk of the court, as soon as may be, shall deliver to the sheriff of the county a certified copy of the whole record of the conviction and sentence; and the sheriff shall forthwith transmit the same to the governor; and the sentence of death shall not be executed upon such convict until a warrant shall be issued by the governor, with advice of the council, under the great seal, with a copy of the record thereto annexed, commanding the sheriff to cause execution to be done; and the sheriff shall thereupon cause to be executed, on such convict, the judgment and sentence of the law."

"SECT. 13. The punishment of death shall, in every case, be inflicted by hanging the convict by the neck until he is dead; and the sentence shall, at the time directed by the warrant, be executed within the walls of a prison of the county in which the conviction was had, or within the enclosed yard of such prison."

We submit upon this, that the Court were bound to name the place for the execution, of the three localities mentioned in the statute; viz. the jail, jail-yard, or house of correction; and that this was not to be left to the discretion of the sheriff.

We submit further, that the Court, by adjudging that the prisoner, after being remanded to the jail, shall be taken "*thence* to the place of execution," have virtually excluded the jail itself, as one of the places for the performance of that duty; and that this is a matter of which he may avail himself as an erroneous proceeding.

As it was only my purpose to make as brief a statement as possible of the errors we insist upon, and to point out the manner in which they have arisen, I shall, without undertaking to comment upon them at length, or to cite the authorities which we think support our position, leave the argument to my associates.

Mr. Goodrich, for the Petitioner.

The petition of John W. Webster, that a writ of error may be issued, proceeds upon an allegation, that a judgment

which has been rendered against him, at the present term of this Court, is erroneous. As has been well said by the learned counsel who preceded me, the application rests upon two supposed defects in the judgment sought to be reversed. The one is, that this Court did not acquire jurisdiction of the indictment or of the party accused; the other is, that the judgment which was rendered is not the judgment of the law. Preliminary to a discussion of the causes assigned as error, several inquiries may be made.

I. Is it within the power of this Court to grant a writ of error, to examine, reverse, or affirm, as the case may be, its own judgment?

Of this there is no doubt; the power to grant the writ is derived from the common law; it is a power incident to every court of record, the judgments of which are final and without appeal. In confirmation of the common law, the power is conferred upon this Court by statute. *Rev. Stat.*, ch. 112, §§ 10, 15, 16, 19.

In the sections cited, it is provided that writs of error, in civil and criminal cases, may issue out of the Supreme Judicial Court, in vacation or in term time, and shall be returnable to the same Court; that the proceedings shall be according to the course of the common law, except so far as modified by local usage; that no writ of error, upon a judgment for any capital offence, shall issue, unless allowed by one of the justices of the Supreme Judicial Court, after notice to the Attorney General, or other prosecuting officer; and that a judgment shall not be reversed for error or defect therein, unless proceedings to reverse the same shall be instituted within six years after the rendition of such judgment. This limitation of time has been changed by a subsequent statute; and a writ of error may now be sued out, at any time after judgment, in criminal cases.—*Statutes of* 1842, ch. 54, § 1. The power to grant a writ of error, such as is now proposed, is recognized by this Court, in *Skipwith* v. *Hill*, 2 Mass. 35, — in which case the Court say: — "If an erroneous judgment, even of our own Court, is shown to us, we reverse it on writ of error, which is a writ grantable *ex debito justitiæ*." The case cited was a civil case. No difference, however, exists as to the power of the Court, between civil and criminal cases. *Evans* v. *Commonwealth*, 3 Met. 153. In civil cases the writ is a matter of right; in capital cases it is a matter *ex gratia*.

II. Assuming the power of the Court to grant the writ, — under what circumstances will it be issued? The statute

already referred to, adopts the common law in this particular, except so far as the same may have been modified by local usage; no such modification of the common law has been made from local usage. The course of the common law is stated in *Bagley's Practice*, p. 515, where it is said: "The writ issues for error in the foundation, judgment, or execution of a suit in a Court of Record; — in civil cases, as matter of course. The writ is returnable in the Court in which judgment is pronounced, when the error is in the process, through default of the clerks or of some matter of fact, and not in law."

Such is the common law which has been adopted in this Commonwealth. Under the statute referred to, the writ issues upon the fiat of any member of this Court, and is therefore to be taken as a matter *ex gratia*. In New York, a writ, under similar circumstances, cannot issue without the sanction of the Attorney General. If he refuse his approval in a proper case, the Court, upon application, command him to sign an approval. In this particular case, as the application is heard before a full Court, the writ will be refused unless a case of reversal is made out. Independently of any authorities, — and yet, at the same time, as the result of all the authorities, — I submit, that, whenever a Court has rendered a judgment without jurisdiction, it will, upon writ of error or upon motion, vacate it; and whenever a Court has rendered a judgment which is not the judgment of the law, if of competent jurisdiction, it will reverse it.

III. I now proceed to the consideration of the assignment of errors, and submit: *That the Supreme Judicial Court did not acquire jurisdiction of the accusation, or of the party accused.*

The jurisdiction of this Court, in a capital case, does not and cannot attach, until after the Municipal Court has exercised a certain prescribed jurisdiction over the accusation and over the party accused, which are enjoined by statute. *Statute of* 1844, ch. 44, sec. 4; which has been read. This statute provides and points out the jurisdiction of the Municipal Court in capital cases. I will state what seems to be its result.

1. The Municipal Court must, in the first instance, adjudicate and say whether an indictment shall be received.

The Municipal Court organize the grand jury, and instruct them as to their duty, and as to the law applicable to the subject-matters which may come before them for investigation. An indictment must have the signature of the foreman;

and the Municipal Court must determine whether the signature purporting to be his, is, or is not, in fact, such signature. Many similar considerations might be adduced to show that the Municipal Court must say whether an indictment shall be received.

2. If the Municipal Court, at the time an indictment is returned, has not acquired, it must, by its process, acquire the custody of the party accused.

3. The Municipal Court must adjudicate the time, within certain statute limits, at which the indictment shall be entered in the Supreme Judicial Court.

4. The Municipal Court must issue its precept or process to the sheriff, commanding him to serve a copy of the indictment upon the accused, and also to notify him of the order of the Court fixing the time of entry.

5. The sheriff must serve and return this precept or process to the Court which issued it.

6. The clerk of the Municipal Court should give notice to the Chief Justice of the Supreme Judicial Court of the finding of the indictment.

7. The clerk transmits the original indictment to the Supreme Judicial Court; and the officer whose duty it is to enter the indictment in the Supreme Judicial Court, produces to that Court a record properly authenticated, showing that the five first things or matters have been done in the Municipal Court. The Supreme Judicial Court, in the language of the statute, "shall *then* and *there* have full cognizance and jurisdiction."

The design and result of these provisions is a legal transfer of the accusation and of the party accused, from one Court to the other. These things must be done, and this Court must have a record from which it can judicially know that they have been done, before its jurisdiction can attach.

If the certificate or record upon the present indictment, which was here at the time the trial took place, was not sufficient, no subsequent production of one, even if it be sufficient, can remedy the defect. If no jurisdiction was apparent at the time of the trial, a new record, if sufficient, merely shows that this Court *might have had* jurisdiction; not, that it *had*. The new record, produced here to-day for the first time, cannot be sent to the Executive as the basis of its action. In support of these suggestions, I refer to the case of *Gibson* v. *Johnson*, 1 Pet. Cir. C. Rep. 44, in which the Court say: "The agreement of the State Court to consider the petition as filed of a preced-

ing term, when the appearance was entered *nunc pro tunc*, cannot give us jurisdiction, when we see, in point of fact, that it was not filed until a subsequent term."

The power of this Court, upon any suggestion of a diminution of the record as it exists in the Court below, to cause the production of a full record, has no application to this case. This writ of error, if granted, brings here only the record of this Court as it existed when judgment was rendered.

In *Chase* v. *Hathaway*, 14 Mass. 222, which was an inquisition for the purpose of appointing a guardian, the Court, upon a probate appeal, held to the necessity of the service of an order of notice being made a matter of record in the Court below, and of a distinct adjudication, there, based upon it, as an essential preliminary of procedure.

The original record, which was here when the cause was tried, is totally deficient in all the things which it should contain, except one. It certifies that the indictment was returned into the Municipal Court on the 26th of January, 1850. It was competent for the clerk to certify this fact. The two other matters which he certifies cannot be regarded in this Court. He cannot certify the official acts of the sheriff, or the import and effect of an order or decree. He may incorporate into his records the return of the sheriff; he may certify any order or decree which is matter of record, and the Court will determine its import. If this Court will (and I do not admit its power to do so) bring up the records from the Municipal Court, it will bring everything thence which appertains to the case. And I submit that if the new record now produced is to be regarded, yet, when taken in connection with the paper which appears there as the one served upon Webster, it does not obviate the objections which I propose. With these suggestions, I proceed at once to the reasons why this Court did not acquire jurisdiction.

First,—The Municipal Court did not adjudicate that the indictment should be entered in this Court.

The original certificate says nothing upon this point which can be regarded. The new record does not recite any order or decree, unless by implication, which will not do: — no intendment can be made as to such a matter. It is merely a notice to Webster that the Court *will* make an order: — *non constat*, that the Court *has* made such an order. The most which it imports is, that the Court will make an order that the indictment will be entered "at the Supreme Judicial Court, now in session."

Second,—The Municipal Court did not adjudicate that the

indictment should be entered at the (then) next term of this Court, or at any intermediate time when it might be judicially known that this Court would be in session.

Although I do not use the words, "at an adjourned term," the result of my argument is, that the entry should have been directed to be made at a regular term, or at an adjourned term. I sustain this position, which is that the entry must be at a day certain, upon several grounds: — Upon the general principles applicable to all process which has a return day, — whether it be returned to the Court from which it issued, or from one Court to another. The precept from the Municipal Court, although returned to that Court, when served becomes a part of the record, and comes here as the operative power which transfers the accused. The entry, therefore, should be at a fixed day certain.

So, under this order, an entry here at any time during the November term would be a compliance with the order. The law does not and will not permit a party to depend, for this length of time, upon the pleasure of the officer whose duty it is to make the entry, before he can know whether the entry is or is not to be made. The fact that this power will not be abused is no answer.

Again, the law requires an order which can and must take effect at all events; not one which may or may not be accidentally effectual. An order, dependent for its vitality upon the contingency that this Court shall continue its session from day to day until the entry can be made, is not such as the law requires. Public justice, as well as private right, may be endangered, if an order of entry is to be sustained which might prove inoperative without the default of any one. The Municipal Court, under the circumstances connected with this order, if it should fail of effect, might not be authorized to make a second order to cure the accident which had produced such failure. In *Morris* v. *State*, 1 Blackford, Ind. Rep., the Court say that the judgment upon a verdict must be certain. Why not require the same certainty in any and every other judgment? — Why not in a judgment which operates, when made known, to transfer the accusation and the party accused of murder, from one Court to another? If certainty in any legal proceeding is ever required, it is here, in a case of life or death. Statutes must be construed so as to have a reasonable effect. The most reasonable and beneficial construction must be adopted. It is to be presumed that the legislature so intended: this is familiar law. It is reasonable and beneficial to a party accused, that he should

be informed, and know to a certainty, when and where he is to meet the accusation.

Again, I submit that the statute, in its result, in its purpose, and in its character, contemplates that the entry shall be made at a day certain. These principles are recognized by this Court, in *Carlisle* v. *Commonwealth*, 7 Met. 470; and in *Commonwealth* v. *Hardy*, 2 Mass., 303. So also they are recognized in cases in relation to the return of awards.—*Southworth* v. *Bradford*, 5 Mass., 524; *Gerrish* v. *Morss*, 2 Pick., 625. *Mott* v. *Anthony*, 5 Mass., 489. In the case of *Carlisle* v. *Commonwealth*, a party convict appealed to an adjourned term of this Court, and recognized to enter his appeal, with which he failed to comply. A suit was instituted upon the recognizance, and successfully resisted upon the ground that it was void, — inasmuch as the statute applicable to the case then before the Court did not authorize an appeal to an adjourned term. I submit that the reasoning of the Court in the case cited sustains the position now taken. If it be said, in answer, that the entry was directed to be made on the 26th of January, the day on which the order was passed, it was not, in fact, entered until the 30th, and so became inoperative.

Third, — The precept or process of the Municipal Court, by which Webster was notified of the proceedings in said Court is a nullity, because not under the seal of the Court which issued it.

This precept, served upon the prisoner and returned to the Municipal Court from which it issued, becomes a part of the record of the Court below, and is designed to accomplish a double purpose. The one is, — notice to the prisoner when and where he is to be tried; the other is, — to accomplish the transfer of the party accused from one jurisdiction to another.

The position, that this order or process should be authenticated by a seal, is sustained by a variety of considerations. *First,* A seal is required, upon the general principles applicable to every precept or process, issuing from a court which has a seal, directed to the sheriff, commanding him to do an official act. The sheriff knows, and by law must know, the seal. He does not know the signature of the clerk without a seal. *Second,* The statute requires it to be under seal. *Statutes of* 1843, chap. 7, sect. 7; by which it is provided, "All *precepts,* warrants, venires, and *processes,* issued from said Municipal Court, shall be tested like similar processes from the Court of Common Pleas, *and shall be* under the seal of the Municipal Court, and signed by the clerk." This statute,

and the one which directs the action of the Municipal Court in capital cases, constitute one law, and are to be construed together. *Commonwealth* v. *Coombs*, 2 Mass. 489; *Stevens* v. *Commonwealth*, 4 Met. 370; Bouvier's Law Dic., *Titles "Precept" and "Process;" Arnold* v. *Tourtellot*, 13 Pick. 172; *Hart* v. *Huckins*, 5 Mass. 260; *Bloom* v. *Burdick*, 1 Hill, N. Y., 130.

If the paper served upon Webster be a precept or a process, the statute is imperative; it must have a seal. In *Commonwealth* v. *Coombs*, the Court held that "proceedings of the sessions in laying out a highway would be quashed, if it did *not appear* that the warrant for laying out was under the seal of the Court." This decision was made upon the statute of 1786, chap. 67, sect. 4, which says, "said Court are hereby authorized and empowered by warrant, *under* the seal thereof, to appoint a committee," &c. Where one statute directs imprisonment, and another, that a portion of every imprisonment shall be solitary, the Court look to both statutes for their power: the two make one law. *Stevens* v. *Commonwealth*, 4 Met. 370, 371; in which case, sentence of imprisonment to hard labor for one year being awarded, but no term of solitary confinement, the judgment was reversed for this latter omission. The Court there looked to two statutes. So here, the Court will examine the two statutes which have been cited, to ascertain what the Municipal Court are bound to do, and how its process shall be issued.

If it be replied, that it is *an order, a decree,* — how is it to be served, except by a precept to the sheriff? Such service cannot be made in obedience to a verbal order of Clerk or Court. So, also, if it be a decree or an order, it is a part of the record, and as such must go to the prisoner under the seal of the Court whose record it is. That the proceedings must be regarded as void for the want of legal process, I refer to *United States* v. *Marvin*, 3 How. 620; *Walden* v. *Craig*, 14 Pet. 147; *Hickey* v. *Stewart*, 3 How. 762; *Wilcox* v. *Jackson*, 13 Pet. 498; *Williamson* v. *Berry*, 8 How. 495.

The case of *United States* v. *Marvin*, 3 How. 620, proceeded upon a statute which permitted claimants of land against the United States to prefer their claims in certain courts, at any time within one year. The Court decided that the courts of Florida could not take jurisdiction under this statute provision, unless suit had been instituted within the year. In the case of *Walden* v. *Craig's Heirs*, it was holden: "If jurisdiction be taken in a case, in which there

has been *no process*, or notice, the proceeding is a nullity; not only voidable, but absolutely void."

Is it competent for the prisoner to take these objections, or is he estopped by his implied assent to these proceedings, so that he cannot now interpose the objections of want of jurisdiction, &c.? To show that he is not estopped, I refer to *Martin* v. *Commonwealth*, 1 Mass. 347; *Commonwealth* v. *Hardy*, 2 Mass. 316; *Latham* v. *Edgerton*, 9 Cowen, 227; *Delafield* v. *Illinois*, 2 Hill, N. Y., 159; *Commonwealth* v. *Andrews*, 3 Mass. 126; *Commonwealth* v. *Mahar*, 16 Pick. 120.

The judgment is not such as by law it should have been.

The judgment, as exhibited in the record of this Court, after a recital of the previous proceedings, is in these words: "Whereupon, all and singular the premises being seen and understood, it is considered by the Court that the said John W. Webster be taken to the jail from whence he came, and thence to the place of execution, and there to be hanged by the neck until he be dead." The correctness of this judgment depends upon the construction of two statutes,—Rev. Stat. ch. 125, § 1; and ch. 139, § 13. If the Court is obliged to look only to the first statute cited, it contains too much, because it excludes one place within which by law the execution may and should take place. If both statutes are to be regarded, the judgment does not contain all that it should, inasmuch as it does not designate the place of execution. I submit, that both statutes are to be regarded, and that it is incumbent upon the Court to designate the place of execution. It is apparent, from the Commissioners' Report of the Revised Statutes, that they contemplated and provided, in ch. 139, § 11, (from which the section 13 of the statutes was taken,) that the Executive or the sheriff should designate the place of execution.

The legislature did not adopt the provisions of the Commissioners. The difference is so great as to authorize and require the inference, that the legislature intended to entrust, within certain statute limits, the power of designating the place of execution with this Court. This view cannot be resisted by saying that there are only two places within which the execution can take place, and a rejection of one is the selection of the other. Such implication cannot be allowed. The judgment of this Court must be certain. Neither is it clear that the law points out only two places. The house of correction is by statute designated a prison. I do not say *it is* a "prison," within the meaning of section

13, ch. 139: I say *it may be;* and the sheriff is not charged with the duty of deciding this question.

Again, the judgment is defective, because it does not adjudge that the execution shall take place at such time as the Executive may appoint. After judgment is pronounced by this Court, an authenticated copy, under seal, must, by law, be delivered to the sheriff; it is his duty to deliver it to the Executive, and subsequently, with the warrant of the Executive, under the great seal, it goes to the sheriff. If the record, which is in the first instance delivered to the sheriff from the Court, does not decree the execution at such time as the Executive may direct, the sheriff may not wait for the action of the Executive. It is no answer to say that the sheriff is bound to know the law and his duty; and, if he disregard them, that he does so at his peril. The safety and rights of the prisoner are not dependent upon the knowledge or fidelity of the sheriff. His rights are intrusted to this Court; and he has a right to repose here for his security. If the judgment is not such as the law requires, it cannot be sustained, but is void. *Hopkins* v. *Commonwealth*, 3 Met. 468; *Hutchinson* v. *Commonwealth*, 4 Met. 359; *Reg.* v. *Hartnett*, Jebb's Crown Cases, 301.

In the case last cited from the Irish Reports, the statute under which the proceedings were had, directed that a party convict, after execution, should be buried within certain prescribed limits. The judgment omitted this direction of the statute, and was thereupon reversed. This opinion was approved by Lord Denman, chief justice of England.

It will be said, in reply, that these objections are mere matters of form and unimportant. I do not so regard them. But grant that they are mere forms. They are forms established by law, obligatory upon this Court. They are forms designed to protect the innocent as well as the guilty. If they are to be disregarded to-day, the whole structure of the law itself may be overturned to-morrow.

Mr. Bemis, for the Commonwealth.

At the request of the Attorney General, I shall not confine myself, in opening the argument on behalf of the Commonwealth, to the statement of new matter in avoidance of the grounds urged on behalf of the petitioner, (of which, indeed, there is little necessity,) but shall proceed at once to reply to those grounds in detail.

Thus far this application has been argued as if this were a hearing upon the writ itself, and the merits of the supposed

errors, and not upon the question of having an opportunity to have those merits considered. But perhaps it admits of doubt, in the first instance, whether the same considerations are applicable to the two aspects of the case: at least, in the instance of a petition for a writ of error upon a capital conviction, as this is.

This whole matter, under our practice, has already passed under the notice of the full Court. As all or the most important of the objections now moved are matters of record, they have already, in contemplation of law, been passed upon by Your Honors. They are not even taken in arrest of judgment. But after a full and able defence upon all points of law, as well as questions of fact, — a defence which all those really acquainted with the conduct of the trial acknowledge to have been most able and faithful, — these supposed matters of technical error are now brought forward as the groundwork for obtaining a re-hearing.

That the application would be reluctantly listened to and slowly granted by Your Honors, if it came in the shape of a motion for a new trial, is obvious from the course of the decisions and the tenor of the language of this Court upon various similar occasions. In *Booth, in Error*, v. *The Commonwealth*, 7 Met. 285, the Court decided that a second writ of error could not be brought in a criminal case. What is the present application, so far as the grounds of error are matters of record, — and I shall presently show that they are mainly so, — but an application for a second writ of error? In *Commonwealth* v. *York*, 9 Met. 93, where a motion was made for a new trial in a capital case on the ground of a misdirection of the Court in point of law, says the Chief Justice in delivering the opinion of the Court, (p. 100,) "Such a motion is of rare occurrence; and, as a capital trial is by law a trial before a full Court, it cannot be considered as a matter of course; and, if allowable at all, it must be on occasions of real difficulty and importance." So, in *Commonwealth* v. *Buzzell*, 16 Pick., 155, the Court, in refusing to save a point raised during the trial for future consideration, say that it is very clear that exceptions cannot be taken in a capital case: "This point came before the Court at Salem, in 1830, on the trial of Knapp for murder; and was so ruled. This consideration may be a good reason for more care in deciding; but a decision, when once made, is so far final as not to be open to exceptions to be taken as of right. After a capital trial before a full Court, if a motion can be sustained for a new trial with a view to reverse any legal opinions expressed by the

Court on the trial, it must depend upon the general merits and the bearing of such opinions upon the decision of the whole cause, and not upon strict technical exceptions."

Very certainly the Court, upon an application like this, will not permit the writ to issue, for the purpose of re-hearing exceptions which only contain matter of abatement; as for a misnomer, and the like.

But without dwelling upon this preliminary objection, which is not of the same importance here as if this application were made to a single member of the Court, I pass to the consideration of the reasons urged for the allowance of the petition, as if the matter were properly open upon the merits. These reasons, with the exception of that relating to the sentence, which I shall hereafter consider, substantially reduce themselves to two :

First,—That, with the indictment, there was not sent up to this Court a copy, "as of record," of the action of the Municipal Court thereon ;

Second,—That such record, when produced, should show, *inter alia*, "an adjudication" of the acceptance of the indictment from the grand jury; of the appointment of "a day certain" for the entry of the indictment in this Court; and of the service of a copy of notice of such appointment, "under seal."

I shall arrange what I have to reply to these reasons under three heads.

1. *That they set forth supposed defects, which are of no moment ;* or,

2. *Only matters merely abateable, and therefore waived, by pleading over ;* or,

3. *Defects which, if ever existing, are now cured by a fuller record of the proceedings of the Municipal Court.*

1. These supposed defects are of no moment.

The question is entirely one of statute construction: — not, what legislation had better have been applied to regulate the transmission of capital indictments from the Municipal Court to the Supreme Judicial Court, but what the *actually existing* legislation has prescribed and rendered requisite.

The whole inquiry turns on the requisitions of the statute of 1844, c. 44, § 4, already quoted. No question of this nature can have arisen in this Commonwealth, earlier than 1830; prior to which time, all capital indictments were found in the Supreme Judicial Court, in the first instance.

By statute of 1830, c. 113, enlarging the criminal jurisdiction of the Court of Common Pleas, capital indictments could,

for the first time, be found in that Court. That statute provides for the mode of certification of the indictment to the Supreme Judicial Court, substantially in the same manner as that of 1844, c. 44. Like the subsequent act of 1832, c. 130, the indictment was made returnable to "the next term" of the Supreme Judicial Court; and "said Court shall cause a copy of such indictment, with an order of said Court, notifying such offender," &c., "to be served on such offender by the sheriff of the county," &c.

These two acts of 1830, c. 113, and 1832, c. 130, and the Revised Statutes, c. 136, virtually abolished the attendance of the grand jury upon the Supreme Judicial Court in the counties other than Suffolk; and the statute of 1844, c. 44, for the first time, abolished their attendance upon the Supreme Judicial Court in Suffolk county.

Now, according to the provisions of this last statute, all that was required to give this Court jurisdiction of this cause has, *prima facie*, been complied with.

The Court has before it an indictment — shown by the certificate of the clerk to have been returned by the grand jury into that Court, and — by him to have been certified and transmitted to this Court.

Though the certificate contains only the word "returned," it seems to be admitted that this is equivalent to the terms of the statute, "found and returned."

But it is, really, because the clerk's certificate is fuller than it need be, and because this Court has more before it than the statute requires, that this question of jurisdiction has been raised. Because the clerk has added to his certificate, (what the statute does not require,) that the sheriff had served the prisoner with an order of notice, which order specified the day of entry in the Supreme Judicial Court, the point is now taken that this Court cannot acquire jurisdiction till it has "record proof" of the doings of the lower Court, and that the record proof (now for the first time produced) does not show due judicial and official action on the part of the judge and officers of the Municipal Court.

In the first place, as to the necessity of this record proof, which makes the first of the petitioner's grounds of error:— Supposing the copy introduced by the petitioner's counsel themselves not to answer the objection, it is sufficient to say, that, however proper as an original object of legislative requirement such kind of proof might have been, it has never been required by our statutes. In some of the other States, as Ohio and Illinois, for instance, where a similar procedure

to our own, in the matter of finding indictments in a lower Court and certifying them to a higher for trial, is recognized, such a statute exists; and such mode of proof is rendered necessary. *See Shoemaker* v. *The State*, 12 Ohio Rep. 43; recognizing the existence of such legislation. *See, also, Holliday* v. *The People*, 4 Gilm. (Ill.) Rep. 111.

But our own statute referred to contains no such requirement. Its language simply is, "if the grand jury shall find and return to the Court any indictment," &c.; not, "and if the Court shall thereupon adjudicate that the same be accepted": — showing that it is the action of the grand jury, and not of the Court, which is regarded.

But, independently of the silence of the statute, what reason is there for the mode of authentication contended for? Is it said, that all matters of judicial or Court procedure are of record, and to be evidenced as of record? — then, why does not the petitioner complain of the omission of record proof of other proceedings of the Municipal Court, as well as those specified? — the summoning and empannelling the grand jury; the presence of a judge; the answering of the grand jury to their names in open Court at the time of returning their indictment, &c.? and subsequently to the finding of the indictment, — of the sheriff's delivery of a copy of it to the defendant; of the clerk's notifying the Chief Justice of this Court of the fact of its being found; and of the transmission of it by the clerk to this Court?

Is the answer urged, — that many of these latter requirements are ministerial, and not judicial? — I reply, Where is the line to be drawn; and which are to be considered exclusively judicial?

One point, seemingly pressed, is the necessity of a record of the "acceptance of the indictment."

But I can find no such thing spoken of in the books. Certainly, our own and the English records of judgments, so far as they are decisive of the question, contain no mention of any such item of a record. A specimen of the mode of making up the record in one of our own counties, Middlesex, is found in *Turns* v. *Commonwealth*, 6 Met. 234. There, there is an entire omission of any adjudication in regard to accepting the finding of the grand jury. And a pretty extensive personal observation of my own, of the mode of making up records in the different counties of the State, as used in hearings upon writs of error, enables me to say with confidence, that no such thing is known to Massachusetts practice. Our records, after setting out the indictment, immediately

proceed, "This indictment was found at the present term; and now the (defendant) is set to the bar," &c., without any mention of an order of the Court accepting it, or ordering it to be recorded, &c. So is the English practice, 4 *Black. Com.* App. And, according to Mr. Gabbett, in his excellent treatise on the Criminal Law, vol. 2, p. 276, it is even customary, in Irish practice, for the grand jury to return their indictments directly into the clerk's office, without the formality of presenting them in open Court.

In our own practice there is, to be sure, a presentment by the grand jury in open Court. But what control have the Court over the return made by them? They are as independent in their sphere as the prosecuting officer. The presiding judge may indeed inquire into the regularity of their doings previous to the finding of their indictments; but, when such indictments are once regularly found, I apprehend that he would subject himself to impeachment, if he should undertake to set them aside, or prevent their being filed.

But the suggestion has been made, that the Court must satisfy themselves of the genuineness of the signature of the foreman, and (perhaps it was meant to be implied) of the regularity of other steps previous to the presentment. And the argument claims further, that this establishes the necessity of a record, and of proof by record.

Now, we need not contend that one indicted capitally has not a place to be heard in the lower Court upon the question of the constitution of the grand jury and the regularity of their finding. Perhaps he has; and perhaps, further, if he disputes that regularity, and wishes to take exceptions to the ruling of the Court, there should be a record made and sent up for the inspection of the court of errors. But what we have to reply to this, is, that if no such dispute is made of the doings of the grand jury, and no such exception made to the ruling of the Court, then the necessity of a record is done away with. Has any such thing occurred in the present case? There is no suggestion, that there has; and, if there had been, we should make the further answer, that there was a time and place to have been heard upon it in this Court before going to trial. Suppose, for instance, that the signature of the foreman was wanting to the bill, or that some improper person had been drawn upon the grand jury, — might not the defects have been pleaded in abatement in this Court? We submit so; and further conceive, that this shows the possible intent of the legislature, that the opportunity for correcting the error need

not exist in the lower Court; or, in other words, as I shall presently submit more at length, that the whole agency of that Court in the matter is ministerial.

So, of the proceedings in the Municipal Court after the finding of the indictment, and before it is entered in this Court. Suppose the prisoner has any exception to take to the proceedings of the judge, clerk, or sheriff, — may he not be heard upon them here? and without the need of a record from below?

But, as I shall have occasion to consider this subject somewhat in reply to the next head of argument urged on behalf of the petition, viz; that certain things should have been "adjudicated" by the Municipal Court, as well as "recorded," I pass from the subject, with the remark, that, besides the silence of the statute in regard to keeping and transmitting a copy of record, we believe the universal practice throughout the State, ever since capital indictments have been found in the Court of Common Pleas and Municipal Court, has been coincident with that which is objected to in the present instance, viz; the sending up the indictment with a certificate merely, and not in connexion with a copy of record. We even venture to question the necessity of keeping any record in the Court below, for any purpose; unless in the case put, — of rulings had, and exceptions taken. And though a record has been kept in the present case, as is shown by the copy read in connexion with the petition, and though it furnishes a complete answer, as we apprehend, to many of the objections raised, yet we suggest that it is quite a matter of supererogation.

I pass, then, to the reply to the second great objection urged for the petition, — that there has been an omission here of adjudications by the Municipal Court, in various particulars.

The most important one urged is that of omitting to fix a day certain, when the indictment should be entered in this Court.

It is contended, that, by the terms of the statute, no other day of entry is intended than the commencement of a regular term, or of a distinct adjourned term, within the suggestions contained in the opinion of the Court, in *Commonwealth* v. *Carlisle*, 7 Met. 467, which has been cited; and as the indictment, in the present instance, was in fact entered in this Court on the 30th of January, a day neither at the commencement of a regular term nor of an adjourned term, that the Court acquired no jurisdiction, and so that the proceedings have been erroneous throughout.

Now, we submit, that nothing can be plainer than the words of the statute, authorizing the entry during a current term: —"At the Supreme Judicial Court next to be holden in and for said county of Suffolk, or at any intermediate time before the next term, when said Supreme Judicial Court shall be in session," &c. The indictment being found in the Municipal Court on the 26th of January, and the Supreme Judicial Court being then in session, and its next regular term beginning on the first Tuesday of March, — was not the 30th "an intermediate time before the next term, when said Court was in session"?

But it is then said, that, if it so happened that it was entered "at an intermediate time before the next term," &c., it should have been so adjudicated beforehand; that not only should a day certain have been named on the record, but that the prisoner's notice should have expressed the same thing; whereas, he was only notified that "it would be entered at the Supreme Judicial Court now in session."

This raises the question of the necessity of an adjudication, or a power of appointment on the part of some person in the lower Court, in the only important shape in which it seems to us that it is raised at all upon the points taken. It is said that some discretion must be exercised by some person as to the time of entry in this Court, and that this is too important a matter to be intrusted to a clerk or a mere ministerial officer; — that one of two things must follow; either that the statute means that the day of entry shall be a fixed day, as the commencement of a term or of an adjourned term, or that it contemplates an exercise of discretion which must be intended to be judicial, and that therefore it should be made matter of record.

Our answer to this is, that the statute throughout contemplates the intervention or agency of the Municipal Court, in this matter of a capital indictment, as wholly ministerial; and, as this view of the subject disposes of the groundwork of the positions taken in behalf of the petition, I proceed to consider it somewhat at length.

So long as the grand jury was attached to the Supreme Judicial Court, there was, of course, no occasion to regulate the mode of transmission of a capital indictment from a lower Court. But after the grand jury was detached altogether from the upper Court, while the trial of such indictment before the traverse jury was still retained there, it became necessary to provide in some manner for the authentication of the indictment found, and for its due transmission

from the lower Court. It has already been shown that this necessity has existed with reference to the country counties only since 1832, and with reference to this county since 1844.

Now, the legislature doubtless intended that the conduct of the grand jury, in making the preliminary presentment in a capital case, could as well be regulated in the lower Court as in the upper. But as the trial before the traverse jury would involve questions of more nicety, and as it was desirable to afford the best possible tribunal for that purpose, they left the exercise of this latter power in this Court, where it had always been vested. The object, then, was to secure proper vouchers of the genuineness of the finding of the grand jury, for the cognizance of this Court; and in all the enactments cited, viz., 1830, c. 113; 1832, c. 130; Rev. Stat., c. 136; and 1844, c. 44, it will appear that the same idea has prevailed; viz., to provide merely for the transmission of an authentic indictment.

For this purpose, the legislature have not deemed it expedient (as would seem to have been a safe analogy following the Irish practice) to permit the grand jury themselves to return their indictment into the clerk's office of the Supreme Judicial Court; but, as it was desirable to accomplish at the same time certain other formalities of notice to the prisoner, &c., they have thought proper to make the Municipal Court (in the instance of Suffolk) the channel of transmission to the upper Court. They have required, as will be seen by attending to the terms of the statute, the following particularities of procedure:—

First, When the indictment is returned into the Municipal Court, (if the prisoner is in custody,) that the judge shall pass an order for the clerk to notify him of the return of the indictment, and of its prospective transmission.

Secondly, The clerk is to see that he is served with a copy of this order, and a copy of the indictment, and then certify and transmit the indictment to this Court; and

Thirdly, The sheriff is to serve the two copies upon the prisoner.

Now, the only possible judicial function to be exercised by the judge of the Municipal Court in this matter, subsequent to the return of the indictment, must be in reference to making the order to the clerk.

Chief Justice.—What do you say to the case of the prisoner not being in custody at the time of the return of the indictment? Is the process, issued thereon, returnable to the Municipal Court, or to this Court?

Mr. Bemis.—I have not considered the case, as it is not the present one; but I presume that the process would be returnable to this Court. The indictment would be transmitted to this Court, I should say, and then this Court would issue its process.

Supposing the prisoner to be in custody, what does the law expect of the Municipal Court judge, in regard to appointing the time for the entry of the indictment in the Supreme Judicial Court? Simply this:—If the Supreme Judicial Court is not in session, then to issue his order to the clerk of his Court to notify, (not to have the day fixed and entered of record,) that the entry will be made at the next statute term or adjourned term of this Court. If this Court *is* in session, then to direct him to notify the prisoner that the entry will be made here, in the words of the statute, "at any intermediate time when said Court will be in session" before next term.

How will the clerk understand and execute this order? By notifying the prisoner, and making the entry, as has been done in the present case, *as soon as may be.* But it may be asked, Has not the clerk, in this way, a discretionary power, to some extent, which the law did not intend? It has been urged, upon the other side, that a man's time of trial, who is indicted for his life, ought not to and cannot depend upon the caprice of a subordinate clerk. But, I contend, there is no opportunity for caprice about it. The law makes it his duty, if the upper Court is in session, to have the notice served, and the indictment transmitted, *as soon as can reasonably be done.* "The party so charged shall, *as soon as may be,* be served with a copy of the indictment," . . . "with an order," &c.; and "notice of such indictment shall be *forthwith* given to the chief or first justice of that (this) Court," — is the language of the statute.

Besides, if the clerk were to exercise any caprice in the matter and disregard his statute obligations, the power resides in this Court, on the application of the prisoner, to correct it. The prisoner has but to complain of delay in being brought to trial, and this Court will issue its mandamus or other proper precept to the clerk of the lower Court, to send forward the indictment without delay, and as speedy a trial as is practicable can be had. So, too, the Revised Statutes, chap. 136, § 30, provide that every person shall be tried at the next term after the expiration of six months from the time when he was imprisoned.

There is a still further consideration why the clerk, as well

as the Municipal Court judge, should not undertake to fix a day certain for the entry of the indictment in this Court; and that is, that they have no power over the sessions of this Court, and cannot therefore prescribe the time of the entry of the indictment here, or render it obligatory upon the clerk of this Court to see that the entry is made at the specified time.

This view of the construction of the statute, in regard to fixing the day of entry of indictment in the upper Court, is fully borne out by the case of *Commonwealth* v. *Carlisle*, *ut sup.*, notwithstanding that it has been cited as an opposing authority upon the other side. In that case, the only question was, whether exceptions from the Municipal Court to this Court were rightly entered during a current session, when the statute only spoke of their entry at "the term next to be held." The Court held that they were not; and, in some explanation of the subject, the Chief Justice distinguished the case from that of an appeal, which came under another provision containing the phraseology, "the next term of said Court, or any session of said Court held by adjournment before the next stated term;" and, in the same case, the Chief Justice gives a form for the entry of an appeal precisely analogous to that now suggested.

The same practice had been suggested in *Commonwealth* v. *Dow*, 5 Met., 329; and in *Berghen* v. *Jones*, 4 Met., 371.

Chief Justice. — What is the date of the decision in *Commonwealth* v. *Carlisle?*

Mr. Bemis. — The opinion is bound up with those delivered at the March term, 1844.

Chief Justice. — And what is the date of the act of 1844, chap. 44?

Mr. Bemis. — It passed February 24th of that year; but it was not to take effect till the first Monday of April.

Chief Justice. — It is my impression that the phraseology of the act of 1844, chap. 44, was adopted with special reference to the views of the Court, either in the case of *Commonwealth* v. *Carlisle*, or of *Commonwealth* v. *Dow*. Some capital case had arisen in Middlesex, where the indictment was found in the Court of Common Pleas shortly after the October term of this Court for that county had commenced its session; and yet the prisoner, in consequence of the provision of the 136th chapter of the Revised Statutes, requiring the indictment to be entered "at the next term" of this Court, was detained in jail until the next spring or summer, before he could have his trial. This led to the provision of

the act for the regulation of capital indictments under discussion, which was drawn with a view of promoting speedier trials in this county.

Mr. Bemis resumes. — Then, as to the issuing of the order, at all, by the judge of the Municipal Court: — It is not a *judicial*, but rather, as it may be termed, a *magisterial* act. The law has made it incumbent upon him to perform the duty, in virtue of his office; but no more *judicially* than as if he were acting as one of the board of accounts under the old provision of the Revised Statutes, chap. 14, § 41; or than as if he were issuing his warrant for the removal of an insane convict, under the statute of 1844, chap. 127, § 2.

It is only for the sake of greater solemnity, that the law has named the judge for this office of setting the notice in motion, rather than the sheriff or the clerk of the Court: — perhaps, in part, to assure the prisoner more forcibly of the formal nature of the proceedings against him, by having him read, at the bottom of his notification, the name of a judge, rather than that of an inferior officer or magistrate.

And this leads me to speak of the only other point connected with adjudication and matter of record, which has been dwelt upon; and this is the omission of a seal to the copy of the order of notice served upon the prisoner. It is said that it should have been sealed, as much as any other process.

We do not understand precisely whether the defect consists in the copy actually served upon the prisoner, or in the omission of the seal to the original order remaining in Court. If the former, it is too plainly matter of abatement, which should have been moved earlier, to need argument. Besides, we hardly see how it can be brought to the notice of the Court in this shape.

But if the supposed defect relates to the original order, then we have to urge that there was no more occasion for the order's being under seal, than for every act and doing of the Court of the most common routine being under seal. An order of placing a prisoner at the bar, or removing him from it, should just as much have that degree of formality. Why not complain, as well, that the order to the sheriff to see that a copy of the indictment was served should have been under seal? The truth is, the most important acts done by a court are not under seal; — That of sentencing prisoners to State Prison, for instance; that even of sentencing this prisoner to death.

But the statute of 1843, chap. 7, § 7, has been cited, by which it is made requisite that "all precepts, warrants, venires,

and processes," issued from the Municipal Court, shall be tested like the processes of the Court of Common Pleas, and be under seal. Is it supposed by the learned counsel, that this makes seals to processes any more requisite in the instance of the Municipal Court, than the Court of Common Pleas, or any other court of superior jurisdiction? The plain intent of the statute is to require a seal to the Municipal Court process, *where the process is of such a nature as to require a seal;* and the old seal of the Court is retained under its new organization.

Besides, it is enough to say of this order, that it is not "a process;" any more than as if the same information had been communicated to the prisoner in open Court. It is no order of command from the Court, but only a communication of information. Why, also, if there is anything in the point, is it not insisted that the notice to the Chief Justice of the finding of the indictment is not under seal?

If the reasoning above urged is just, then the position, that the Municipal Court are intended by the law to act only a ministerial part in the transmission of a capital indictment to this Court, and to serve as a mere conduit or channel of conveyance, is not only made good, but the further position is substantiated, that, acting in that ministerial capacity, it has complied with all the requisitions of the statute. It has had the order of notice passed and recorded, the service has (for aught that properly appears) been duly made by the sheriff, and the clerk has certified and transmitted the indictment to this Court. This Court, therefore, had proper cognizance of the case; and I submit, that our first position is made out, that the grounds of error raised are immaterial and of no moment. But if this is not sufficiently shown, I pass to my second point, —

2. *That they disclose only matters of abatement, and which have therefore been waived by pleading over.*

Various analogous cases have arisen where the Courts have decided that defects similar to those now complained of must be taken advantage of, if at all, in the way of abatement or preliminary objection. I have classified some of these under two or three divisions, which I will not trouble the Court with commenting upon in detail.

The privilege of having a copy of the indictment must be claimed in advance, or it will be deemed to have been waived. 1 Chit. Cr. L. 405; *Smith* v. *The State*, 8 Ham. (Ohio R.) 294; *State* v. *Calvin*, R. M. Charl., (Geor. R.,) 142; *Loper* v. *The State*, 3 How. (Missip. R.) 429; *State* v. *Johnson*,

Walk. (Missip. R.) 392; *State* v. *Williams*, 3 Stew, (Ala. R.) 463.

So, as to the omission of the endorsement of the names of the witnesses on the back of an indictment. *Rex* v. *Dickinson*, Rus. & Ry. 401; *State* v. *Roberts*, 2 Dev. & Bat. (N. Car. R.) 540; *State* v. *McEntire*, 2 Car. L. R. 287; *King* v. *The State*, 5 How. (Missip.) 730.

As to the omission of the seal on the copy of the notice complained of here, it has been decided by this Court in three very strong civil cases, that the omission of a seal to process is waived by pleading over. *Ripley v. Warren*, 2 Pick. 592; *Stevens v. Ewer*, 2 Met. 74; *Foot v. Knowles*, 4 Met. 386. This latter case went the length even, that the use of a Common Pleas Court writ in commencing a Supreme Court action was cured by going to trial upon the merits.

Coming to matters of preliminary proceeding, and at the same time of substance, — it has been held that disqualifications of grand jurors must be excepted to at the outset. *Turns* v. *Commonwealth*, 6 Met. 224–234, per *Shaw*, *C. J.* *See also Commonwealth* v. *Tucker*, 8 Mass. 286; *The People* v. *Jewett*, 3 Wend. 314; *McQuillen* v. *The State*, 8 Smede and Mar. 599. So even of want of partiality in a traverse juror. *Commonwealth* v. *Knapp*, 10 Pick. 480. And of a juror's being an atheist. *McClure* v. *The State*, 1 Yerg. 206. So of a juror's not belonging to the county in which he is empanelled. *Case mentioned by Jackson*, *J.*, in *Amherst* v. *Hadley*, 1 Pick. 41, — a capital trial. So of irregularity in the choice of the foreman of the traverse jury. *Case last cited.*

I will add to these the citation of a class of cases, — all capital cases, — involving very nearly the same point as is raised here, in regard to the supposed irregularity of transmission of the indictment from the lower Court. In *Shoemaker* v. *The State*, 12 Ohio R., 43, where a statute required that the clerk of the lower Court should send up the original indictment, and with it a transcript of the proceedings upon it, and the clerk made no certificate upon his transcript or the original indictment, that he had deposited those papers in the clerk's office of the upper Court, (though he actually made the deposites,) it was held that it was no omission, or that it had been waived by the prisoner's going to trial. So in *Holliday* v. *The People*, 4 Gilm. (Ill.) R. 111, where, under a similar statute provision in regard to transmitting indictments to the superior Court, as referred to in the Ohio case just cited, the clerk of the inferior Court had omitted, in sending up with the original

indictment and a transcript of the record, to transmit also a certificate that the transcript was a true one, it was held, after verdict, that the omission did not vitiate the proceedings; *especially* as the objection had not been taken at an earlier stage. In *Beauchamp* v. *The State*, 6 Black. 299, the statute (of Indiana) had provided, that, upon a change of venue from one county to another, the papers in a capital case should be sent to the Court having cognizance of the cause, and that the clerk of this last-named Court should thereupon docket them: where, under this provision, the prisoner being arraigned and pleading not guilty in the Court where the indictment was found, and then obtaining a change of venue, went to trial and was convicted in the latter Court, and then raised the objection that the indictment was not recorded in the former Court, it was held that the omission did not vitiate the verdict. And in the *State* v. *Williams*, 3 Stew. (Ala.) R. 454, under a similar proceeding, growing out of a change of venue, where a prisoner capitally indicted, after pleading not guilty and obtaining a continuance in one Court, obtained a change of venue to another, and there, after two continuances, was convicted, and raised the objection that it did not appear how the papers had been transmitted from the first Court, (they being simply found on file in the second Court, without any certificate or authentication of the manner of their transmission,) it was held that the objection came too late.

If the omissions complained of in the present case do not come directly within the scope of these decisions, they certainly are of the same nature, and should only be regarded as abatable in their character. The plain intent and scope of all the requisitions of the statute of 1844, c. 44, are merely to furnish the prisoner with notice of the prospective proceedings against him; and if he has any complaint to make of surprise or informality, when actually taking notice and going to trial in this Court, he should make it at the time of arraignment, and before the fixing of the time of trial.

It is not necessary to say anything upon the point of curing the supposed defects of the doings of the Municipal Court, as a complete record has been produced on the part of the petitioner himself.

Upon the point of the informality of the sentence, a single suggestion is sufficient to dispose of it; — that, as the manner of entering judgment only is drawn in question, it is perfectly competent for the Court to correct any supposed errors in that regard, at any time during its present term, — it being

the same at which the conviction was had. 6 *East.* 237; 2 Gab. Cr. L. 554.

But, independently of this, I apprehend that the argument of the learned counsel proceeds upon an entirely erroneous basis.

We do not understand that the Court contemplated any definition or prescription of the place of execution in their sentence. When they say, in the language of the judgment, as made up, that the prisoner "be taken back to the jail, and *thence* to the place of execution," "thence" does not necessarily imply from *that place;* but means as well, *from that time, thenceforth, thereafter;* and we conceive the intent of the judgment to be, that no place of execution is prescribed, — leaving it to the sheriff to avail himself of the statute latitude, of the jail, jail-yard, or house of correction.

As to the omission of prescribing an obedience to the requisition which should afterwards be contained in the warrant, in regard to the *time* of execution, the statute (section 13, R. S., c. 139) is obligatory upon the sheriff to execute the sentence "at the time directed by the warrant;" and it would be an idle formality in the judgment to refer to it: the Court has no power over the sheriff in this particular. It belongs, by statute, to the Executive; or, if they do not define it, it is a matter of discretion with the sheriff.

For these reasons, therefore, we submit that there has been no error in the proceedings, and that this application ought to be denied.

The Attorney General followed Mr. Bemis upon the points made by him in reply to Mr. Goodrich, and said, in substance: —

My experience in the Courts has failed to teach me a most important lesson, if I could be surprised by this application, or by the ingenuity and subtlety with which it has been urged in the argument. The learned gentleman, who, by an unusual indulgence of the Court, has been permitted to unite his efforts with those of the regularly assigned counsel for the prisoner, has at least succeeded in showing, that, in a judicial procedure involving such vital interests as this, it is not difficult for counsel of great legal acumen to raise questions, and allege errors, sufficiently plausible to constitute the foundation of an apparently sincere and earnest argument. In a struggle for life, much is conceded to the party who is contending for that great stake, and to those who appear in the lists as his champions; and what, in other cases, might be

treated as the desperate expedients of counsel, may, where such an issue is depending, claim and receive a respectful consideration.

But in this case it is not to be forgotten, that all the objections which are raised are matters apparent upon the record; that they have already been subjected to the scrutiny of counsel, whose ability and fidelity ought to satisfy the prisoner and his friends that nothing which could avail him had been overlooked; and that they have passed under the revision of this learned Bench, in the patient and careful conducting of a trial unexampled among us for its duration, and for the scrupulousness with which, during its entire progress, every right of the prisoner has been guarded.

The statute upon which this application is founded, like that of New York, of which it is substantially a copy, imposes upon the Court the responsibility of exercising a sound judicial discretion in granting a writ of error in a capital case. It is not every mere technical defect in the proceedings, which can have worked no injury to the prisoner, and which is first suggested by him after a full hearing upon the merits and the finding of a jury against him, that shall suffice to annul all the proceedings and results of a capital trial. It must be something of a graver character, by which substantial injustice has been done, or may have been done, to him, that can justify, under this statute, a reversal of the solemn verdict of a jury. And this seems to have been the view entertained by the Court in New York of the intention of the legislature in the enactment of this statute. See *Colt's case*, 3 Hill, N. Y., 43. I do not resist this application upon any such radical and pernicious notion, as that technicalities and forms are not to be observed as important and essential in the administration of the criminal law; but, if defects in them are to be taken advantage of, it must be at the proper time, and with a reasonable regard to the question, whether they have worked any injustice to the prisoner.

In this case, we maintain, on behalf of the Government, that there has been no error, either in the preliminary proceedings or in the sentence; that the errors which are assigned in this application are immaterial, and furnish no sufficient ground for reversing the judgment; and that the prisoner, so far as the errors refer to the preliminary proceedings, if any existed, has waived them by pleading in chief, and proceeding to trial.

The fatal fallacy that underlies the whole case, as presented on behalf of the prisoner, consists in treating this as a

question of *jurisdiction*, when it is simply a question of the *regularity of process*. The jurisdiction of this Court in a capital case rests not upon the recent statute concerning the Municipal Court in the City of Boston, but upon the general law of the Commonwealth, which is as old as the Commonwealth itself.

[The Attorney General here recited and commented upon the statute regulating the finding of indictments in capital cases in the Municipal Court, and their transmission to the Supreme Judicial Court, and contended that every requisition of that statute had been complied with in this case. He then proceeded :]

The prisoner was in custody. He was served with a copy of the indictment. He was also served with a notice that the indictment would be entered in the Supreme Judicial Court. He was thus in possession of all the information contemplated by the statute to enable him to plead intelligently to the indictment, whenever this Court should order him to be brought up for arraignment; and when that was done, if there had been any defect or omission in the previous proceedings which rendered it necessary for him to have further time to plead, then was the time for him to have suggested it to the Court, and any reasonable delay would have been granted for the purpose.

It is contended, that if there was any deficiency or imperfection in the record of the Court below, or in the certificate of that record transmitted here, at the time of the trial, that deficiency could not be supplied, or that imperfection remedied, at any subsequent period. To this it is answered, that this Court will not grant a writ of error upon any such ground as this, if, upon the production of the record as finally made up in the Court below, it appears that all the requisite proceedings have been had, to inform the prisoner, so that he would not be prejudiced in any substantial right.

It is also objected, that the Municipal Court had never adjudicated as to when the indictment should be entered in this Court. This is no part of the duty of that tribunal; and if it had been done, as that Court can have no control over the duration of the terms of this Court, its designation of a particular day for the entry of the indictment here might have defeated itself: for, before its adjudication could have been carried into effect, this Court might have adjourned without day. Such a construction of the statute would render inoperative the provision which authorizes or requires the entry of the indictment in this Court at any other time than the

first day of a regular term. The statute has clearly made the transmission of the indictment a mere ministerial duty of the clerk of the Municipal Court, and he has discharged that duty in this case in strict conformity with all the essential requisitions of the law. If he had simply sent into this Court the indictment, with a certificate under the seal of the Municipal Court, that it had been duly returned by the grand jury into that Court, it is submitted that this alone would have authorized and required this Court to take jurisdiction of the case and of the prisoner; and this jurisdiction could not be affected by any informalities in the previous proceedings in the Municipal Court.

We maintain, therefore, that no question of jurisdiction arises in this case.

But, suppose the alleged errors to exist as contended for on the other side, it does not follow that this Court, in the exercise of its judicial discretion, will grant this application, — no prejudice having arisen therefrom to the prisoner. See *Lady Herbert's Case*, 11 *Mod.* 119. *Bacon's Ab. Trial, Q.* 4 *and* 6. 3 *Wood*, 152. 3 *Har. and McHen.* 101. *Amherst* v. *Hadley*, 1 Pick. 41, 42. *People* v. *Wiley*, 3 Hill, N. Y. 214. *Shorter* v. *The People*, 2 Comst. 193.

Besides, the proceedings in this case have strictly followed the invariable practice in this county, in numerous cases which have arisen since the enactment of the statute, in some of which the trials have resulted in convictions and executions; and in one of which, the case of *Com.* v. *Peter York*, the conviction was sustained after a second hearing upon certain questions of law before the full Bench. It is respectfully submitted, that a uniform course of practice and procedure upon a statute like this is entitled to great consideration from the Court, in giving to its provisions a judicial construction.

If the Court should be of opinion that the errors alleged in this application do not touch the question of jurisdiction, it is manifest that it is now too late for the prisoner to urge them as grounds upon which the judgment should be reversed. The case of *Hardy* has been relied upon; and the unfortunate remark of the distinguished judge who pronounced the opinion in that case, that "a man may quibble for his life," is invoked, as it frequently has been before by counsel, to give importance to trifling exceptions and induce a sacrifice of the substance of justice to its shadow.

What was really decided in Hardy's case furnishes no authority for the argument attempted to be maintained in this.

And as to the dictum before referred to in the opinion of the Court, with the profoundest reverence for the wisdom of the great magistrate who uttered it, I respectfully maintain that "*quibbling*," anywhere, or for any purpose, is neither decorous, respectable, nor justifiable ; least of all, in a grave discussion in a Court of Law. I rather defer to the sentiment expressed by another great judge, as to the danger of yielding too much to mere technical objections, — and which may be quoted here as an apt commentary upon these proceedings, and as indicating a safe rule by which to be governed in the consideration of the points that have been raised. Says Lord Hale, (2 Hale P. C. 193,) "In favor of life, great strictnesses have been in all times required in points of indictments; and the truth is, that it has grown to be a blemish and inconvenience in the law, and the administration thereof. More offenders escape by the over easy ear given to exceptions in indictments, than by their own innocence ; and, many times, gross murders, burglaries, robberies, and other heinous and crying offences, escape by these unseemly niceties, to the reproach of the law, to the shame of the Government, and to the encouragement of villainy and the dishonor of God."

The question whether there has been error in the sentence is decisively answered by my associate, in the suggestion, that, as the term is still open, all that matter is now within the control of the Court. I leave it with a single remark, — that, whatever may be the literal phraseology of the clerk's record in this respect, the sentence, as pronounced, was in the customary formula which the Court have invariably used in this Commonwealth; and further, that as to the place of execution, whether the determination of it is confided by law to the Court, the Executive, or the Sheriff, it is quite clear that the prisoner has no election in the matter, and that it cannot therefore be urged by him as a ground of error.

Under the decisions of this Court, no error in a sentence can be corrected. The Court can only declare the sentence to be erroneous and discharge the prisoner. *Shepherd's case*, 2 Met. 419. It is for Your Honors to say, whether, upon such grounds as have been taken, the law requires that this prisoner, convicted by a jury of his own selection, of a crime more atrocious than any recorded in our history, shall be discharged from the consequences of that verdict and go at large, effectually protected by the Bill of Rights from any future prosecution ; — or whether, in his person, there shall

be exhibited a great and righteous vindication of the violated justice of the Commonwealth.

Mr. Merrick, for the Petitioner.

No dispute being made on the part of the Government, that this Court have authority to grant the writ of error, as prayed for, and that a proper case exists for its allowance if this Court has had no jurisdiction of the indictment or of the person of the petitioner, I shall proceed at once to the consideration of the two questions, whether this Court had such jurisdiction, and whether the sentence awarded was regular and legal.

Both these questions are entirely new; and they depend for their determination upon the proper construction of the statutes regulating these matters.

The question of jurisdiction arises under section 4 of the statute of 1844, already cited. Previous to 1832, this Court had exclusive jurisdiction in all capital cases. But, by the statute of 1832, c. 130, the attendance of the grand jury upon this Court was transferred to the Court of Common Pleas in all other counties than Suffolk; and, when the grand jury returned an indictment for any capital offence into this last-named Court, the clerk was to certify and return the same to the next term of this Court. The provisions of this statute were incorporated into the 82d chapter of the Revised Statutes. The effect of this legislation was to transfer original jurisdiction of all capital offences, committed in the counties named, into the Court of Common Pleas.

In like manner, the statute of 1844, c. 44, divested this Court of original jurisdiction in capital cases in Suffolk, and conferred it upon the Municipal Court. Prior to that statute, the Municipal Court had no jurisdiction whatever in capital cases.

But there is an important difference between the statute of 1832, c. 130, and that of 1844, c. 44, in one particular, viz.: that, while the first provides that the capital indictment shall be returned into the Supreme Judicial Court at its *next* term, this latter provides that the return shall be made "at the next term, or at any intermediate time when said Court may be in session." Now, under this latter statute, it is first to be settled at which of the alternative times the entry shall be made, before the indictment can be entered at all; and this Court cannot acquire that jurisdiction of the proceedings which it is authorized to exercise after the proper transfer of the case, till such a decision or adjudication is made by some

competent authority: for the jurisdiction of the Municipal Court, which has once attached, will not cease till it has been dispossessed by the valid proceedings of this Court.

Then, by whom is such an adjudication to be made? Clearly not by the prosecuting officer on the one side, or by the prisoner on the other. Nor is it to be presumed that the legislature designed to leave it to the clerk, — a mere ministerial, recording officer. The adjudication is to be made by the Court. The indictment, in the words of the statute, is to be returned by the grand jury "to the Court;" and *the Court* are then to attend to the performance of the statute requisitions, of issuing process for the arrest of the accused, &c. This process, too, is to be controlled by them, after it has once issued.

If the person accused has not been already apprehended, then, after his arrest, in the words of the statute, "he is to be served, as soon as may be, by the sheriff or his deputy, with a copy of the indictment, and with an order of the Court giving notice to him that the indictment will be entered at the Supreme Judicial Court next to be holden in and for said county, or at any intermediate time when said Court shall be in session in said county." But no such order of notice can be served until an order upon which it is predicated is first made. That is to say, the Court must first adjudicate when the indictment shall be entered, and then the order may be made and served.

It cannot be the true construction of the statute, as has been urged on the part of the Government, that the indictment is to be certified and transmitted by the clerk, so that it may be entered in the Supreme Judicial Court *at the earliest possible day;* for there is a discretion to be exercised somewhere, that this shall be done at such a time as shall best subserve the purposes of public justice, as well as protect the rights of the respective parties. It is a question upon which the defendant, as the party most deeply interested, has a right to be heard before its final determination.

Chief Justice. — If the party be not in custody when the indictment is found, what is to be the course of proceeding?

Mr. Merrick. — Process must issue for the arrest of the accused, and the indictment be continued from time to time in the Municipal Court, until the arrest is effected; and, if the arrest be not made in season to admit of the entry of the indictment at the next term of the Supreme Judicial Court, the consequence must be, that, as there is no provision for its entry at a later term, the indictment will fail, and the Government must commence proceedings anew.

Chief Justice. — Suppose no order should be made by the Municipal Court, or that the indictment should not be certified and transmitted to this Court, — could not this Court obtain cognizance and jurisdiction of the case by proper process?

Mr. Merrick. — I hardly know how to answer. No doubt this Court have a general authority to rectify the erroneous proceedings of inferior tribunals, and may, at any time, interfere to correct any irregularities which may occur there. But if the preliminary proceedings in the Municipal Court are a necessary pre-requisite to the jurisdiction of this Court, as we contend that they are, then the prosecution must fail, unless they are complied with.

Chief Justice. — Suppose an indictment found in the Municipal Court, and a term or more elapses before the accused is apprehended, — from which Court should process issue?

Mr. Merrick. — I do not see how the indictment could be transmitted from the Municipal Court to this Court till the preliminary proceedings of the statute had been complied with; and so, that this Court could have any basis of proceeding till the indictment was before it.

Chief Justice. — In case the party was not in custody when the clerk of the Municipal Court had certified and transmitted the indictment to this Court, (supposing that to be the regular course,) I am not aware that there is any such formality necessary as the transfer of custody of the prisoner, when that shall be afterwards obtained.

Mr. Merrick.—I suppose a proper transfer of the indictment would carry with it this jurisdiction over the criminal.

Attorney General.—Will my brother allow me to put to him this supposition? — Suppose the statute had only named the next term of the Supreme Judicial Court as the time of entry of the indictment, and then the clerk of the Municipal Court had omitted to make the entry in proper season, — is there any doubt that this Court could remove the indictment by certiorari, and take further cognizance of the case?

Mr. Merrick.—I am not prepared to say that the proceeding would be allowable. There is still the difficulty of the statute pre-requisite.

Chief Justice.—I do not now remember any other provision for such a course as that suggested by the Attorney General, than the general enactment in the 81st chapter of the Revised Statutes for the supervisory jurisdiction of this Court over the lower courts.

Mr. Merrick resumes.—But an order of notice must not only be made, but it must be served on the prisoner by the

sheriff or his deputy. This implies something in the nature of a precept, and therefore under the seal of the Court. The provision of statute of 1843, c. 7, § 7, is explicit that all precepts of the Municipal Court shall be under seal; and, without a seal, a paper from the office of the clerk has no legal character or validity, and cannot affect a party upon whom it is served.

It has been suggested, that the defendant has waived his right to take these objections, by pleading and going to trial; and various cases have been cited in support of this position. But those cases do not touch the present. They are cases of irregularities in the proceedings in Courts which had jurisdiction of the subject-matter, and which might have been taken advantage of at the time of their occurrence. But the question of jurisdiction stands upon a wholly different ground. If this Court had not jurisdiction originally, it could not acquire it by any consent of the defendant's, nor could the want of it be supplied by any waiver of objections. *Cary* v. *Daniels*, 5 Met. 236.

As to the sentence, the language in the record that he is "to be taken thence to the place of execution," means from the jail to some other place. Now, this is a departure from the express terms of the statute. The form here followed is that which has long prevailed in this Commonwealth; perhaps immemorially. But it is erroneous in not regarding the change introduced into the law by the provision of the 13th section of the 139th chapter of the Revised Statutes. By virtue of that, the sentence must be executed, at the time fixed by the Executive warrant, "within the walls of a prison of a county," or "within the enclosed yard of such prison;" thus leaving a discretion to be exercised by the officer as to the two or more prisons of the county. But the sentence narrows this discretion by excluding the jail itself, and thus deprives the prisoner of the right of appeal which he has to make to the sheriff, to fix the place of execution at the place where he can endure it with the least exposure, or for which he may have some reason of preference.

Such selection may seem to be of inconsiderable importance; but, if of any consequence to the prisoner, the law will not deprive him of it.

The Petitioner presents these grounds of error to the consideration of the Court, not as an appeal for favor, but as matter of strict right; and he feels sure, that, if they have legal validity, the prayer of his petition for the writ of error will be granted.

TUESDAY, JUNE 18th.

CHIEF JUSTICE SHAW delivered the opinion of the Court, as follows: —

A petition for the allowance of a writ of error, by a person under conviction and sentence of the law for the aggravated crime of murder, demands, and is entitled to receive, from the Court to whom it is legally addressed, not only the earliest attention which can be given to it, but the most deliberate, patient, and thorough consideration which a sense of judicial duty can ever require.

This application for the allowance of a writ of error was made at an adjournment of the Court held by one judge; but, although within the jurisdiction of one judge, we think it was very properly postponed, to be considered by the whole Court, being, it is believed, the first application of the kind under the Revised Statutes, and involving questions of great delicacy and importance. It is made in pursuance of Rev. Stat. c. 112, § 16, which provides, that "no writ of error upon a judgment for a capital offence shall issue, unless allowed by one of the justices of the Supreme Judicial Court, after notice given to the Attorney General, or other attorney for the Commonwealth."

The reason for this restraint and qualification of the right of suing out a writ of error, in a capital case, which does not exist in other criminal cases, is, we think, obvious.

Every trial of any person for an offence punishable with death has, from the earliest times, been required by the laws of this Commonwealth to be held by the full Court, in which a quorum must attend. Until the statute of 1820, c. 14, the entire trial, including the arraignment, was to be before a full Court. By that statute, § 8, it was provided that the arraignment might be before a single judge. This was substantially re-enacted by statute 1832, c. 130, § 6, and embodied in Rev. Stat. c. 136, §§ 21, 22. So that, although the law was changed and modified as to the more formal and unimportant part of the proceeding, yet the most essential, that of conducting the trial and passing the judgment, has always been confided to the whole Court.

Now, the difference between the results of a trial thus conducted, and the trials for inferior offences conducted by the Court of Common Pleas, or by one judge in this Court, is obvious. All those points of law respecting the admission and rejection of evidence, the directions to be given to the jury, and the legal and due course of procedure, which are ordina-

rily raised, discussed, and made the subject of exception in a trial before a single judge, and reserved for the consideration of a full Court, are, in a capital trial, raised, discussed, and decided by a full Court on the spot. Sometimes this is done without much discussion; but oftentimes, after an elaborate argument on both sides. These decisions in matters of law, though made during the progress of a trial, have the same character, in regard to being final and conclusive, as the decisions of a full Court on a bill of exceptions ordinarily have, because they are made by a full Court in the first instance, and there is no other or higher court for whose consideration they can be reserved. But there is this practical difference; that, in the capital trial, the law is ruled first, and has its proper and legal effect upon the verdict of the jury; whereas, in case of exceptions, the verdict must necessarily be taken provisionally, subject to be set aside if any of the exceptions are sustained. In cases of such magnitude, in which as early a final decision as can be had, consistently with fairness, fulness, and impartiality, is so essential to the administration of public justice, and where repeated trials would be attended with injurious consequences, it was, we think, an important consideration with the legislature to require the trial in the first instance to be before a full Court, competent to a definite decision of all points and questions of law arising on the trial.

That this object has been to some degree effected, may perhaps be inferred from the fact, that, since the adoption of the Revised Statutes providing for the allowance of a writ of error, this, it is believed, is the first instance in which such an application has been made.

In addition to the power which the accused has, on a capital trial, to take the opinion of the whole Court upon every question of law arising in the course of the trial, without the intervention of a bill of exceptions, he has also a right, after verdict and before judgment, by motion in arrest of judgment, to take any objection to the form and sufficiency of the indictment, or to any fault or defect apparent upon the record; and time is always allowed for that purpose. And in this particular case, although sentence was passed soon after the verdict, the time for passing that sentence was not fixed, until the Court had been authoritatively informed, that it was not the desire or intention of the defendant or his counsel to make any motion in arrest of judgment.

In theory of law, therefore, in ordinary cases of capital trials, before judgment is pronounced, every question of law arising in it has been brought before the full Court, — the

Court of final resort, — and by them decided. And, in order to show how far the theory of law in this respect is practically carried out, I may add, that, in this case, every interlocutory decision, and every direction and instruction to the jury, in matter of law, were given with the unanimous concurrence of the four judges who sat on the trial; and, upon the deliberations had by all the judges upon this petition and the arguments thereon, and the revision of the trial to which they have given rise, no dissent to the correctness and regularity of the proceedings has been expressed by our associate, who did not personally attend at the trial.

But notwithstanding this extreme solicitude of the law to prevent all error and mistake in legal proceedings before pronouncing the solemn sentence of death, and the precautions taken, in accordance with the plain dictates of justice and humanity, to prevent so solemn a judgment from being drawn in question for slight causes, still it is not to be overlooked, that, after judgment, some new fact may arise or be disclosed, some important and material requirement of the law may appear to have been inadvertently overlooked or disregarded, which may render it important to the great purposes of justice, that the judgment should be revised, and, if justice requires it, that it should be reversed and set aside: for the law may be equally defeated of its just purpose, when the innocent are made to suffer, as when the guilty escape.

From this review of the provisions of law providing for the trial of capital cases, and the cautious provision made for their revision on writ of error, it is manifest that the legislature intended that this power should be applied to those cases only where some error had occurred, material to the judgment. With this view of the law, we will proceed to examine the objections made to the judgment sought to be reversed.

The first objection made to the judgment is, that the Court acquired no jurisdiction of the indictment. This is a very grave and indeed a decisive objection to the judgment; and, if it can be sustained, the judgment ought certainly to be reversed.

This alleged want of jurisdiction is supposed to arise from a want of compliance with the provisions of law, in transferring the original indictment from the Municipal Court to this Court. The objection is spread out into a number of particulars enumerated. It is contended, that in case of an indictment in the Municipal Court, in order to give this Court jurisdiction of the subject-matter, the indictment, and of the party accused, the following things must appear: —

1. The Municipal Court must, in the first instance, adjudicate whether an indictment shall be received.

2. If the Municipal Court, at the time an indictment is returned, has not acquired, it must, by its process, acquire the custody of the party accused.

3. The Municipal Court must adjudicate the time, within certain statute limits, at which the indictment shall be entered in the Supreme Judicial Court.

4. The Municipal Court must issue its precept or process to the sheriff, commanding him to serve a copy of the indictment upon the accused; also notify him of the order of the Court, fixing the time of the entry.

5. The sheriff must serve and return this precept or process to the Court which issued it.

6. The clerk of the Municipal Court should give notice to the Chief Justice of the Supreme Judicial Court.

7. The clerk transmits the original indictment to the Supreme Judicial Court.

The Supreme Judicial Court shall "*then and there* have cognizance and jurisdiction."

The officer whose duty it is to make the entry must produce a record from the Municipal Court, showing that the five things first named have been done.

It is contended, that the first five of these requirements are necessary to give this Court jurisdiction of the indictment, and of the person of the accused. These are supposed to be required by the statute of 1844, c. 44, § 4, which we shall have occasion to consider hereafter.

The first question is, What is necessary to give the Supreme Judicial Court jurisdiction in case of an indictment for murder or other capital offence?

A statute may contain various provisions, some of which are conditional, and without a compliance with which the Court will not have jurisdiction; and others, which are merely directory, intended to secure an orderly course of proceeding, to detain the person of the accused if already in custody, or to arrest him if at large, and to give to all others concerned the requisite information. These latter are not conditional, and a compliance with them is not necessary to give jurisdiction.

In order to understand what is the jurisdiction of this Court in capital cases, it is necessary to go back to our earlier legislation.

From the adoption of the Constitution to the passing of the Act of 1832, the Supreme Judicial Court, succeeding to the powers and duties of the Superior Court of Judicature,

under the Province laws, has had the sole and exclusive jurisdiction of all capital offences. This Court was attended by a grand jury, organized under its directions, and all indictments for capital offences were returned here and tried here. This Court also had jurisdiction of many other crimes. By the statute 1832, c. 130, a different mode of distributing the criminal jurisdiction was adopted. In all other counties except Suffolk, the criminal jurisdiction had been transferred from the Court of Sessions to the Court of Common Pleas, and the criminal jurisdiction of this latter Court had been greatly enlarged. In order to avoid the necessity of summoning grand juries to attend the Supreme Judicial Court, it was provided that no grand juries should be selected or required to attend this Court, except in the county of Suffolk. It was further provided, that grand juries returned to the Court of Common Pleas were authorized and required to perform all the duties of grand juries for the county. There were further provisions in case the grand jury should return a capital indictment; in most particulars, like that hereafter named for Suffolk, — except that the clerk was peremptorily required to return the original indictment into the Supreme Judicial Court, at the term next to be holden for said county.

Next in order came the Revised Statutes, which provide, c. 81, § 3, that the Justices of the Supreme Judicial Court shall have cognizance of all capital crimes, and of all other crimes, offences, and misdemeanors, which shall be legally brought before them.

This provision is the basis, the foundation of the jurisdiction of this Court in capital cases; and the other provisions of the statutes are rather intended to direct the mode in which it shall be carried into effect.

Thus the law stood, until the act of 1844; and the same grand jury which attended the Municipal Court attended also the Supreme Judicial Court, and when their deliberations resulted in a capital indictment, it was returned by them into the Supreme Judicial Court. In all other cases, with few exceptions, the indictments were returned to the Municipal Court.

But, by that statute, § 4, the same system was applied substantially to the county of Suffolk, as had before been adopted in other counties; the grand jury, though still styled the grand inquest for the body of this county, were required to appear and attend only in the Municipal Court; and, in case of a capital indictment, that Court was made the conduit by which it was transmitted, in the simplest possible form, to the Supreme Judicial Court.

[Here the Chief Justice quoted the provision of § 4 at length, as found before on page 510.]

The Supreme Judicial Court have still cognizance of all capital crimes. "Cognizance" is a word of the largest import, embracing all power, authority, and jurisdiction. If it can be said to be limited at all by this statute, it is only thus far, — that the Court of Common Pleas and the Municipal Court have now no authority to organize and direct grand juries and regulate their proceedings, in all cases of crimes and offences, including homicide, so far as the inquiry and indictment are concerned; but, beyond that, the jurisdiction of the Supreme Judicial Court is unchanged.

The Supreme Judicial Court having cognizance, thus, of all capital offences, when an indictment for such an offence is found and returned by a court of competent jurisdiction, nothing further is necessary to give this Court jurisdiction to try and decide it, except that it be brought to their judicial notice; and this is done by its being certified and transmitted to them in the manner required by law.

We will now proceed to consider the specific objections to the jurisdiction of this Court, arising from the supposed erroneous and defective proceedings in the Municipal Court.

1. It is insisted that the Municipal Court must, in the first instance, *adjudicate* whether the indictment should be received or not, and that no such adjudication appears by their record to have been made.

In the opinion of this Court, no such adjudication was necessary or could be had. The Court had only the duty of receiving the indictment when returned; and the certificate that it was returned into Court by the grand jury is conclusive that it was so received.

2. That if the Municipal Court, at the time an indictment is returned, has not acquired, it must, by its process, acquire the custody of the party accused.

We are of opinion there is no ground for this position. It is provided, that, if the party accused is not in custody, process shall be forthwith issued for his arrest. But this is a mere matter of precaution; if he is arrested, it must be to answer to the charge; and to that he must answer in the Supreme Judicial Court, because there alone the case is cognizable: it is not necessary that the Municipal Court should have custody of his person. But, if they do thus issue process, the indictment is still to be transmitted to the Supreme Judicial Court; and, if the accused is in custody, he may be brought there by *habeas corpus*, to be arraigned and held on the in-

dictment; and, if he is not in custody, this Court will issue a warrant to arrest him. Rev. Stat. c. 135, § 1, &c. Whether in custody under a warrant from a Police Court, a magistrate, from the Municipal Court, or on an original warrant of the Supreme Judicial Court, he must be in the common jail of the county, and held to answer to a charge; and, this being a charge not bailable, he is necessarily in close custody; and the certainty of the return day of the process, or of the time of the session of the Court to which the indictment is sent, becomes comparatively immaterial. There is but one Court having cognizance of the case, one custody where the accused can be held, and a plain and easy mode of bringing in the party to answer to the charge. In a case where exceptions had been taken, but the recognizance was made returnable to the wrong term of the Court, it was held that this Court, by the terms of the statute, had cognizance of the cause, and having cognizance of the cause, they would issue a warrant to take the party into custody, and thus obtain jurisdiction of the person; and upon the case thus before them, a judgment could be entered. *Commonwealth* v. *Dow*, 5 Met. 329.

3. The next requirement insisted on, under this statute, is, that the Municipal Court must adjudicate the time, within certain statute limits, at which the indictment shall be entered in the Supreme Judicial Court.

We are unable to perceive anything in this statute requiring any such adjudication. It is made the duty of the clerk to transmit and certify the original indictment to the Supreme Judicial Court, at the next term thereof, or at any intermediate time when said Supreme Judicial Court shall be in session in said county. This is a ministerial act, to be done by the clerk, which does not even require an order of the Court. The statute requires the Court to make an order, giving notice to the accused that the indictment will be so entered. But such an order is not essential to the jurisdiction of this Court; it is merely directory to the Municipal Court. Suppose the indictment transmitted to this Court, no such order having been made: the Court, by force of the statute, has cognizance of the indictment, may bring in the party by *habeas corpus*, if in custody, and when brought in, if it appears that the accused has not had the notice required by the statute, it would be a good reason, if he should want further time to plead or prepare for trial, why he should have it; but it would not affect the jurisdiction.

But it is said that such an adjudication, or order, should be certain, and fix the time definitively. The answer is, that it is

precisely conformable to the statute, and leaves it no more indefinite than the statute leaves it. It had been found, from some experience, that the provision requiring the indictment to be returned "at the next term of the Court, to be held," &c., was attended with great inconvenience, when such term would not commence under many months, and yet the Court actually be in session. It created great and unnecessary delay, contrary to the great consideration of public policy and justice, which assures to a party in custody a speedy trial. In the mean time, the case of *Commonwealth* v. *Carlisle*, 7 Met. 467, (being *scire facias* on a recognizance,) had been decided, by which it was found that there was some difficulty in making appeals, &c., returnable at an *adjourned term* of the Supreme Judicial Court. It pre-supposed a former session of the Supreme Judicial Court, and an adjournment over for a considerable time to a day certain, and that, fixed and known. But the real and obvious purpose of the statute of 1844, making it the duty of the Municipal Court, by the grand jury, to find and return all indictments, was to conform to the circumstances and course of business in this county, where the Supreme Judicial Court is in actual session nearly or quite half the year; so that, if, when the indictment is returned in the Municipal Court, the Supreme Judicial Court is engaged in an actual session, in progress, adjourning from day to day, it may be entered in this Court at any time when it shall be in session, before the next term. This is precisely what the public exigency required; it was, we think, precisely what the statute provides; and we see no difficulty in complying with its terms. It creates no more uncertainty or doubt as to the time and place when the accused is to appear and answer, or as to the time and place at which the arraignment and trial are to take place, than if the grand jury were, as formerly, a branch of the Supreme Judicial Court and returned their indictments directly there. The Municipal Court is employed to organize and direct the grand jury until an indictment is returned; all else is to be done in the Supreme Judicial Court.

4. It is insisted that the Municipal Court must issue its precept or process to the sheriff, commanding him to serve a copy of the indictment upon the accused, and also to notify him of the order of the Court fixing the time of entry.

The objection is, as we understand, that the copy of indictment which went to the sheriff had no seal attached to it, and that the precept to the sheriff should have been under seal. If, by "process" or "precept," the counsel taking this

exception, understand a writ, or issuable process, we can perceive no clause in the statute requiring it. The direction of the statute is, that the party charged shall, as soon as may be, be served with a copy of the indictment by the sheriff. No precept or process, especially if the party is in custody, need go to the sheriff; a simple order is sufficient, like the order to the sheriff by which the party is brought into Court from day to day.

But the more decisive answer to this applies also to the next. 5. That the sheriff must serve and return such process to the Court which issued it. That answer is, that these provisions are merely directory; and, whether complied with or not, it does not affect the jurisdiction of this Court.

6 & 7. The provision that the clerk of the Municipal Court shall give notice to the Chief Justice of the Supreme Judicial Court, and that the clerk shall transmit the original indictment to the Supreme Judicial Court, are not deemed to be conditions on which alone the jurisdiction of the Supreme Judicial Court will attach.

We are of opinion, that, if any of these requirements are essential to the jurisdiction, it is the last above-named, requiring the clerk to return the original indictment into this Court; but, if it is so, it duly appears that this was done in the present case.

It is further insisted that the officer whose duty it is to make the entry must produce a record from the Municipal Court, showing that the five things first above-named have been done.

I am not quite certain that the learned counsel meant to be understood by "the officer whose duty," &c., the Attorney General, or public prosecutor. If so, we think it is a mistake. The Attorney General does not make the entry. The clerk of the Municipal Court is to transmit, &c., and then this Court has, *eo instanti*, jurisdiction. It is to be considered, that the Municipal Court is a department of the Court of Common Pleas, and that in all other counties to which the former act serving as a model for this, in most respects, applies, the clerk of the Court of Common Pleas and of the Supreme Judicial Court is one and the same officer; and that, in performing his duty of transmitting the original indictment, it does not go out of his official custody, but only from one side of his office to the other.

But when it is said that a record must be produced, &c., the answer is, that the statute requiring these things to be done is merely directory; and that neither the acts themselves, nor a production of a record of them, is necessary to the jurisdiction of this Court.

It was argued on the part of the defendant, that he was not too late in these exceptions, and could not be justly taken to have waived them.

We have not thought it necessary to consider this much, because, if the Court had no jurisdiction, no consent, upon which the doctrine of estoppel and waiver are founded, could give jurisdiction. We have considered the objections, therefore, so far as they may be deemed pre-requisites to jurisdiction, without any reference to any supposed waiver. But when the Court have full jurisdiction, then, if some provision made for the benefit of the accused has not been complied with, if he has made no objection at the time on that ground, he may with great propriety be held to have waived it; because, had he made his objection in season, the deficiency might have been supplied. But we perceive no such defect, and no occasion to inquire whether any rights have been waived. All the requirements of the law intended for the benefit of the accused appear to have been formally and substantially complied with.

The case of *Com.* v. *Hardy*, 2 Mass. 303, was cited to show that a Court would set aside a verdict, when they had no jurisdiction. It is, undoubtedly, a good authority to that point. But, as to what might be considered sufficient to show want of jurisdiction, it is wholly different from the present. It was held, in that case, under the statute of 1804, c. 105, requiring all capital trials to be holden before a full Court, that the arraignment is an essential part of the trial; and that, when the arraignment was before one judge, there was no issue of which the Court had jurisdiction. This is, no doubt, a correct decision, as the law then stood. When the party had pleaded guilty, before one judge, if properly arraigned, he might and must have been sentenced on such conviction; as he must now, since that jurisdiction has been conferred on the Court when held by one judge. To show the importance of an arraignment, a case may be stated which occurred in this country but a few years before the case of Hardy, where one indicted capitally for burglary, on arraignment pleaded guilty. The Court declined to receive his plea, cautioned him of the consequences, and informed him that he had a right to have a trial: he thereupon pleaded not guilty, had counsel assigned him, and, on trial, was acquitted. The case under consideration bears no resemblance to Hardy's case.

But the Court are inclined to think, that, independently of the proceedings under the statute of 1844, after the finding

and return of the indictment, the jurisdiction of this Court, under the Revised Statutes, c. 81, § 5, would attach. By statute of 1782, c. 9, § 2, it is provided that "the Supreme Judicial Court may, by *certiorari* or other legal methods, cause to be brought before them as well indictments or other criminal prosecutions pending in, as the records of sentences, orders, decrees, and judgments of any Court of inferior criminal jurisdiction; and to proceed, order, and award thereon, as shall be by law provided and directed:" and I am not aware that there is anything in the Revised Statutes to diminish this power. If the Municipal Court or the clerk should fail to return the indictment, either at the current term, or at an adjourned term, or the next regular term of the Supreme Judicial Court, it would be competent for this Court, under its jurisdiction of all capital offences, to cause the indictment to be brought to this Court by *certiorari*, and to order in the accused by *habeas corpus*, or warrant to arrest, and then proceed to trial. On the indictment being returned, it becomes complete, as a criminal accusation: its validity does not depend on being returned at the Municipal Court; the accused is liable to be called into the proper Court to answer to it; and this Court would, in the supposed case, have cognizance and jurisdiction of the indictment and of the accused, and would of course proceed to trial. Were it otherwise, this Court might be ousted of its jurisdiction in cases of the highest importance. This view was not distinctly taken at the argument. The decision of the Court is not dependent upon it; but, if correct, it illustrates and establishes the principles above stated.

The last error assigned in the petition is, that neither the judgment pronounced, nor the judgment rendered by the Honorable Court, on the indictment aforesaid, is warranted by, or in accordance with, the laws of this Commonwealth; but that each is contrary thereto.

It would be a source of deep and lasting regret, if, in a transaction of such solemnity, a serious error, or even a manifest error in point of form, however inadvertent, had been committed.

The judgment, as stated in the copy of the record annexed to the petition, is as follows:

"Whereupon, [after reciting the proceedings,] all and singular the premises being seen and understood, it is considered by the Court, that the said John W. Webster be taken to the jail from whence he came, and thence to the place of execution, and there be hanged by the neck until he be dead."

It has not been customary, in this Commonwealth, for the Court, in the case of judgment of death on a capital conviction, to direct the particular form in which it shall be entered up by the clerk; but we are assured by the clerk, that in this form he has followed a uniform series of precedents, extending back to the time immediately succeeding the adoption of the Constitution.

It has been understood, as well before as since the Revised Statutes, that all such sentences are to be carried into effect by a warrant from the Executive, at a time therein directed, in the mode and at the place fixed by him; and that it is not the duty or the province of the Court to fix the time or place, or to issue any warrant to the sheriff directing the execution; though a different practice, it is believed, prevailed under the Provincial Government. The specific objection to the above form of sentence is, that it attempts to fix a place of execution, and does it imperfectly or illegally. By the Revised Statutes, c. 139, § 13, such sentence is to be executed within the walls of a prison, of the county in which the conviction is had, or within the enclosed yard of such prison. The argument is, that by the terms "taken to the jail from whence," &c., "and thence to the place of execution," an execution within the walls of the jail is excluded. But we do not so understand it; the order is equivalent to the common order accompanying any sentence, viz.: "to be taken into or kept in custody, till sentence is to be executed, and thence"— that is, from that custody in which he is to be kept till the time of execution — "to the place of execution." The particular word is to be taken in connection with the subject-matter, and with the well-known law and practice which exempts the Court from the duty of stating either time or place of execution in the judgment.

As this is an application for the allowance of a writ of error, and not a question on the return of a writ of error, and as this is the same term in which the judgment was given and the sentence pronounced, and the irregularity, if it were one, was not in the actual form of the sentence given, but in the form of the records in which it was entered, it would be competent now for the Court, if erroneously entered, to amend it according to the truth. The sentence actually pronounced was in these words: —

"That you, John W. Webster, be removed from this place, and detained in close custody in the prison of this county, and thence taken, [i. e., from such custody,] at such time as the Executive Government of this Commonwealth may by

their warrant appoint, to the place of execution, and there be hung by the neck until you are dead."

But, upon the fullest consideration, the Court are all of opinion, that the judgment and sentence, in the form in which it is entered, does not, by any just construction, undertake to direct the place where the sentence shall be executed; that it leaves the executing officer to the full power and authority conferred on him by law, to execute the sentence within the walls of the prison, or in the prison-yard, at his discretion; and that it is not obnoxious to the objection taken against it, and is not erroneous.

Petition for the allowance of a writ of error dismissed.

PROCEEDINGS UPON THE APPLICATION TO THE EXECUTIVE, INCLUDING THE PRISONER'S CONFESSIONAL STATEMENTS.

Before the application for the writ of error, and about three weeks after the verdict, Professor Webster addressed to His Excellency the Governor, and the State Council, the following petition for a review, or re-hearing, of his case.*

To His Excellency George N. Briggs, LL. D., and to the Honorable Council of the State of Massachusetts.

Having been convicted before the Supreme Judicial Court of the murder of Dr. George Parkman, I would most respectfully and humbly petition your Excellency and the Honorable Council to be permitted to declare, in the most solemn manner, that I am entirely innocent of this awful crime; that I never entertained any other than the kindest feelings towards him; and that I never had any inducement to injure, in any way, him whom I have long numbered among my best friends.

To Him who seeth in secret, and before whom I may ere

* The Reporter is informed by a member of the Executive Council, that the body of this petition, as well as the signature appended, was in the Professor's own handwriting. The original, as will be seen from the subsequent statement of Dr. Putnam, was withdrawn; and only a copy now remains in the Executive archives.

long be called to appear, would I appeal for the truth of what I now declare, as also for the truth of the solemn declaration, that I had no agency in placing the remains of a human body in or under my rooms in the Medical College in Boston, nor do I know by whom they were so placed. I am the victim of circumstances, or a foul conspiracy, or of the attempt of some individual to cause suspicion to fall upon me, influenced perhaps by the prospect of obtaining a large reward.

When first charged with this dreadful crime, I did not publish to the world a declaration of my innocence, or any explanation of the circumstances tending to bring suspicion on me, solely in consequence of entire ignorance of the course I ought to adopt, and implicit reliance on the calmer judgment of others. I had, however, prepared for publication a document to that effect; but as there was a strong disposition, from the first, to misinterpret and misrepresent my every look, action, and expression, it was deemed most advisable for me to preserve and maintain silence. The document was, therefore, with no little struggle on my part, withheld. Immediately upon my arrest, every means was resorted to, to bend even the most trifling appearances in my laboratory, and insignificant circumstances, to add to suspicion, and to pervert them to my disadvantage.

In the state of mind in which I was, silence was constantly urged upon me; and I complied, more strictly perhaps than I ought to have done. Every method of poisoning the public mind and of exciting prejudice against me was resorted to; falsehoods, imputations, and fabrications were daily diffused; and I soon perceived that the contradiction of one would lead to others, and that the refutation of them all would be an endless task. I therefore submitted in silence and resignation, believing that the time must shortly arrive when He who bringeth light out of darkness would cause the truth to appear, and my innocence be made manifest to all.

Had I previously been aware of the use that was to be made of some circumstances on my trial to give an unjust and erroneous impression, if unexplained, I should have been provided with evidence to explain them most satisfactorily.

Some of the statements, references, and circumstances, however, could not be fully explained or disproved without the testimony of my wife, of which, unfortunately, I could not avail myself. I now pray Your Honors that the evidence may be reviewed by you, and that the testimony of my wife may be heard and received, as also my own statements and explanations.

Repeating, in the most solemn and positive manner, and under the fullest sense of my responsibility as a man and as a Christian, that I am wholly innocent of this charge, to the truth of which the Searcher of all hearts is a witness, I would humbly and respectfully pray that the privilege I have asked may be granted. I do this under the full belief that the testimony and explanations I would now offer are such as will disprove many things, impair very greatly the evidence of at least two witnesses, and place in their true light circumstances now obscure.

On this review of my case, Your Honors will, I trust, find sufficient reasons for reversing the decision of the Court, and for the interposition of mercy.

The knowledge of my feelings and habits, and of my various engagements and occupation of time, both before and after the disappearance of Dr. Parkman, have, from the first, been sufficient assurance to my afflicted family of my innocence; and neither that, nor their trust in Him who has sustained both them and me in our days and nights of sorrow and sadness, have been shaken by the unlooked-for result of my trial. They would pray to be permitted to unite with him who is their sole earthly dependence in this petition, believing that your Excellency and the Honorable Council will find sufficient grounds for granting to me a pardon, and of restoring to them the husband and father, — for which I most respectfully and humbly pray.

Boston, April 24, 1850. J. W. WEBSTER.

[*Withdrawn on application of Dr. Webster, June* 4, 1850.]

A fortnight after the decision of the Court upon the application for a writ of error, at a meeting of the Governor and Council held on the 2d of July, 1850, a second petition of the prisoner for a commutation of sentence was received, of which the following is a copy: —

To His Excellency the Governor, and to the Honorable Executive Council of the State of Massachusetts.

JOHN WHITE WEBSTER, a convict under sentence of death in Boston jail, in behalf of himself and of his wife and his children, respectfully petitions, that the sentence awarded against him by the law may be commuted to such other less horrible and ignominious punishment as your honorable body may mercifully decree.

Your petitioner fully admits that he was tried before a fair

and impartial tribunal, and that, under the law, as it exists, his jury, composed as it was of honorable and high-minded men, could have returned no verdict other than they did. But he respectfully reminds your honorable body, that the two great moral ingredients of the crime of murder, malice and premeditation, have never been found against him by a jury, but have been necessarily inferred by the arbitrary rules of the law from certain general facts which your petitioner will not deny, but the extenuating details of which no man, in your petitioner's situation, can ever possess legal evidence to prove. These details your petitioner has confided to the friend who presents his petition, with authority to state them to your honorable body, in the hope that you will find therein reason to extend to your petitioner and his family that mercy of which the law has made you the dispensers.

Boston, June, 1850. J. W. WEBSTER.

This petition was forthwith referred to the Committee on Pardons, of which the Hon. JOHN REED, Lieutenant Governor, was Chairman; and at the request of the Rev. GEORGE PUTNAM, S. T. D., who desired to be heard in support of the petition, twelve o'clock of the same day was assigned for the hearing.

At the hour named, the Committee met in the ante-chamber, and the Rev. Dr. Putnam appeared, and, having read the petition, proceeded to make the following

PRELIMINARY REMARKS.

The grounds which I am authorized to take in aid of the petition of J. W. Webster, and which I take, not as an advocate pledged to a side, but in good faith as expressing my own personal belief, are as follows:—

That the human remains found in the Medical College in November last were those of the late George Parkman, and that he came to his death by the hands of Dr. Webster, in a moment of passion, under great provocation; that there was no premeditation nor murderous intent; that there was a homicide, but not a murder; or, if it could be called a murder, under the rigid interpretation of the rules of common law prevailing in this Commonwealth, yet that it was not murder, according to the moral judgments of our people or of mankind;—not the crime to which the public sense of justice awards the punishment of death, or for which that punishment is inflicted under the usual and actual administration of the law in Massachusetts.

I am enabled to present, from Dr. Webster's own lips, a statement of the facts connected with the homicide. The credibility and value of his statement must depend partly on the date of it, and upon the circumstances under which it was made. Before reading it, therefore, I will relate those circumstances to the committee.

My acquaintance with Dr. Webster before his trial had been of the slightest and most casual kind. Soon after his sentence, I received from him a request that I would visit him as a clergyman during his imprisonment. It was a service not to be declined.

I had followed the reports of the trial, and acquiesced in the verdict as a righteous one, and had no thought but that the sentence was to be, and ought to be, carried into execution. I did not make it my object to draw a confession from him early, or to lead him to commit himself, one way or the other, on the question of his guilt or innocence. I carefully avoided every remark and inquiry that might tempt him to make any false declaration. He seemed to understand me, and neither denied nor declared his guilt. I expected he would finally be induced to communicate to me whatever he knew about the disappearance of Dr. Parkman, and about the remains found at the College. But I was in no hurry about this. I thought I should be more likely to obtain from him the exact truth, by waiting till a favorable time. Accordingly, it was my object, for the first weeks, to become acquainted with him, to win his confidence and attachment by attention and sympathy, and to endeavor to make those impressions of a moral and religious nature which were suited to his situation as a more or less sinful, and certainly dying man. As time passed, I seemed to myself to have succeeded in these objects, almost beyond my hopes.

At length, on the 23d day of May, I had made up my mind to address him in a wholly new strain, and to demand of him a full statement of facts. I then believed myself to be on such terms with him, that I could abruptly and authoritatively demand his confidence. I did do so, and I was not disappointed in the result. On entering his cell that day, I told him that I was going to broach a new and important subject to him, and he must listen to me seriously, and not reply till I had done. I then said to him, that he must have felt all along that there was one barrier to our free communication; one point on which we did not understand one another; that the embarrassment which attended the avoiding of that point obviously went far to defeat the satisfaction and profit to himself

which ought to result from our interviews. I said that he must certainly have some knowledge, respecting the fate of Dr. Parkman, which I had not, and that the unshared secret must be to him an oppressive and intolerable burden; that the time had come when he ought to share it with some one, and, under the circumstances, with me; that I had scrupulously foreborne hitherto to press him on this point, and urged it now, only because I believed it would be for his relief and peace of mind; that I thought he must feel, by this time, that he owed me the truth, and that he could trust me; that he need not fear to tell me the whole truth, for I was not there to reproach him, nor to judge him, but to comfort him in his distress, and to help him in making peace with God and his conscience, and to assist him, if I might, to live while he lived, and die when he should die, with the humility of a sinner and the firmness of a man, and, I trusted, the hope of a Christian; that, in order to my being of any real service to him, there must be truth and true relations between us. I cautioned him not to answer me hastily, not to speak till he was prepared to tell the whole and absolute truth; that I would endeavor to put a favorable construction upon his silence; that I was in no hurry; and that he might take a day or two more to consider whether my advice to him to make a full disclosure was not reasonable and good.

I spoke to him some time in a strain which I have thus indicated. He seemed to me much affected by what I said; and, when I paused, he said immediately, "I am ready to tell you all. It will be a relief to me." He then proceeded to relate the facts which I have since embodied in the statement now to be presented; and I put to him a great number of questions, all of which he answered promptly, and with every appearance, it seemed to me, of an honest purpose to tell the truth. Some of the minor facts and explanations were given by him on a subsequent day; but the outline of the whole narrative and the more important details were given at the interview of May 23d.

It is important to observe, that, at that date, the writ of error was pending, and also that Dr. Webster's petition for a full pardon, with strong declarations of entire innocence, was in the hands of the Governor. If the writ should fail, he considered everything as staked upon that petition, the declarations it contained, and the documents and affidavits which he believed would be obtained for its support. His immediate family, firmly and sincerely believing him entirely innocent, were engaged in seeking facts and papers to sustain his peti-

tion. I am confident that, at that time, he had not the remotest idea of approaching the Executive in any other way than according to the tenor of that petition, nor began to contemplate the question, whether commutation would be a practicable or even a desirable alternative. His whole thought, so far as he entertained any hope, was of pardon on the ground of innocence. Once, in the course of his narrative, he suddenly paused and said, with an appearance of anxiety, "What if the writ should be granted, and a new trial follow, might not you be summoned and compelled to reveal all that I have said to you?" I told him, No; that the Government would not put me into his cell as his confidential friend, and then try to use me as a spy; that it would be an outrage not to be thought of; and that I would not consent to be so used, whatever might be the consequences to myself. I had previously told him that I should never reveal his statements to any one while he lived, without his consent; and that, if I survived him, he must leave all to my discretion. I feel sure that it had not occurred to his mind, that his statements to me could ever be used by me with a view to his advantage; but he had a moment's solicitude lest I might be compelled to reveal them to his harm. He seemed to me to make his disclosures simply because he was unwilling to deny my earnest request and wished to manifest his confidence in me, and because, at the same time, he was glad to have the opportunity of relieving his mind of its dreadful secret.

I will add here, that I did not make my demand of Dr. Webster at the suggestion of any legal or other friend of his, nor did any person know of my intention to make it. And neither Dr. Webster's statement, nor the fact that he had made any, was communicated by me to any person until more than two weeks after it had been received by me. Since that time no steps have been taken by me without the concurrence of Dr. Webster and his recognized legal adviser.

Two or three days after I received Dr. Webster's statement, I advised the withdrawal (temporary, at least, and I hoped final) of his first petition to the Executive, and it was withdrawn.

Prof. Webster's Confessional Statement, as reported to the Council by Rev. Dr. Putnam.

On Tuesday the 20th of November, I sent the note to Dr. Parkman, which, it appears, was carried by the boy Maxwell. I handed it to Littlefield unsealed. It was to ask Dr. Park-

man to call at my rooms on Friday the 23d, after my lecture. He had become of late very importunate for his pay. He had threatened me with a suit, to put an officer into my house, and to drive me from my professorship, if I did not pay him. The purport of my note was simply to ask the conference. I did not tell him in it what I could do, or what I had to say about the payment. I wished to gain, for those few days, a release from his solicitations, to which I was liable every day on occasions and in a manner very disagreeable and alarming to me, and also to avert, for so long a time at least, the fulfilment of recent threats of severe measures. I did not expect to be able to pay him when Friday should arrive. My purpose was, if he should accede to the proposed interview, to state to him my embarrassments and utter inability to pay him at present, to apologize for those things in my conduct which had offended him, to throw myself upon his mercy, to beg for further time and indulgence for the sake of my family, if not for my own, and to make as good promises to him as I could have any hope of keeping.

I did not hear from him on that day, nor the next (Wednesday); but I found that on Thursday he had been abroad in pursuit of me, though without finding me. I feared that he had forgotten the appointment, or else did not mean to wait for it. I feared he would come in upon me at my lecture hour, or while I was preparing my experiments for it. Therefore I called at his house on that morning (Friday), between eight and nine, to remind him of my wish to see him at the College at half-past one, — my lecture closing at one. I did not stop to talk with him then; for I expected the conversation would be a long one, and I had my lecture to prepare for. It was necessary for me to save my time, and also to keep my mind free from other exciting matters. Dr. Parkman agreed to call on me, as I proposed.

He came, accordingly, between half-past one and two. He came in at the lecture-room door. I was engaged in removing some glasses from my lecture-room table into the room in the rear, called the upper laboratory. He came rapidly down the steps and followed me into the laboratory. He immediately addressed me with great energy: "Are you ready for me, sir? Have you got the money?" I replied, "No, Dr. Parkman;" and was then beginning to state my condition, and make my appeal to him. He would not listen to me, but interrupted me with much vehemence. He called me "scoundrel" and "liar," and went on heaping upon me the most bitter taunts and opprobrious epithets. While he

was talking, he drew a handful of papers from his pocket, and took from among them my two notes, and also an old letter from Dr. Hosack, written many years ago, and congratulating him (Dr. P.) on his success in getting me appointed professor of chemistry. "You see," he said, "I got you into your office, and now I will get you out of it." He put back into his pocket all the papers, except the letter and the notes. I cannot tell how long the torrent of threats and invectives continued, and I can now recall to memory but a small portion of what he said. At first I kept interposing, trying to pacify him, so that I might obtain the object for which I had sought the interview. But I could not stop him, and soon my own temper was up. I forgot everything. I felt nothing but the sting of his words. I was excited to the highest degree of passion; and while he was speaking and gesticulating in the most violent and menacing manner, thrusting the letter and his fist into my face, in my fury I seized whatever thing was handiest, — it was a stick of wood, — and dealt him an instantaneous blow with all the force that passion could give it. I did not know, nor think, nor care where I should hit him, nor how hard, nor what the effect would be. It was on the side of his head, and there was nothing to break the force of the blow. He fell instantly upon the pavement. There was no second blow. He did not move. I stooped down over him, and he seemed to be lifeless. Blood flowed from his mouth, and I got a sponge and wiped it away. I got some ammonia and applied it to his nose; but without effect. Perhaps I spent ten minutes in attempts to resuscitate him; but I found that he was absolutely dead. In my horror and consternation I ran instinctively to the doors and bolted them, — the doors of the lecture room, and of the laboratory below. And then, what was I to do?

It never occurred to me to go out and declare what had been done, and obtain assistance. I saw nothing but the alternative of a successful removal and concealment of the body, on the one hand, and of infamy and destruction on the other. The first thing I did, as soon as I could do anything, was to drag the body into the private room adjoining. There I took off the clothes, and began putting them into the fire which was burning in the upper laboratory. They were all consumed there that afternoon, — with papers, pocket-book, or whatever else they may have contained. I did not examine the pockets, nor remove anything except the watch. I saw that, or the chain of it, hanging out; and I took it and threw it over the bridge as I went to Cambridge.

My next move was to get the body into the sink which stands in the small private room. By setting the body partially erect against the corner, and getting up into the sink myself, I succeeded in drawing it up. There it was entirely dismembered. It was quickly done, as a work of terrible and desperate necessity. The only instrument used was the knife found by the officers in the tea-chest, and which I kept for cutting corks. I made no use of the Turkish knife, as it was called at the trial. That had long been kept on my parlor mantel-piece in Cambridge, as a curious ornament. My daughters frequently cleaned it: hence the marks of oil and whiting found on it. I had lately brought it into Boston to get the silver sheath repaired.

While dismembering the body, a stream of Cochituate was running through the sink, carrying off the blood in a pipe that passed down through the lower laboratory. There must have been a leak in the pipe, for the ceiling below was stained immediately round it.

There was a fire burning in the furnace of the lower laboratory. Littlefield was mistaken in thinking there had never been a fire there. He had probably never kindled one, but I had done it myself several times. I had done it that day for the purpose of making oxygen gas. The head and viscera were put into that furnace that day, and the fuel heaped on. I did not examine at night to see to what degree they were consumed. Some of the extremities, I believe, were put in there on that day.

The pelvis and some of the limbs, perhaps all, were put under the lid of the lecture-room table in what is called the *well*, — a deep sink lined with lead. A stream of Cochituate was turned into it, and kept running through it all Friday night. The thorax was put into a similar well in the lower laboratory, which I filled with water, and threw in a quantity of potash which I found there. This disposition of the remains was not changed till after the visit of the officers on Monday.

When the body had been thus all disposed of, I cleared away all traces of what had been done. I took up the stick with which the fatal blow had been struck. It proved to be the stump of a large grape vine, say two inches in diameter, and two feet long. It was one of two or more pieces which I had carried in from Cambridge long before, for the purpose of showing the effect of certain chemical fluids in coloring wood, by being absorbed into the pores. The grape vine, being a very porous wood, was well suited to this purpose.

Another longer stick had been used as intended, and exhibited to the students. This one had not been used. I put it into the fire.

I took up the two notes, either from the table or the floor, — I think the table, — close by where Dr. P. had fallen. I seized an old metallic pen lying on the table, dashed it across the face and through the signatures, and put them in my pocket. I do not know why I did this rather than put them into the fire; for I had not considered for a moment what effect either mode of disposing of them would have on the mortgage, or my indebtedness to Dr. P. and the other persons interested; and I had not yet given a single thought to the question as to what account I should give of the objects or results of my interview with Dr. Parkman.

I never saw the sledge-hammer spoken of by Littlefield, and never knew of its existence; at least, I have no recollection of it.

I left the College to go home, as late as six o'clock. I collected myself as well as I could, that I might meet my family and others with composure. On Saturday I visited my rooms at the College, but made no change in the disposition of the remains, and laid no plans as to my future course.

On Saturday evening I read the notice in the Transcript respecting the disappearance. I was then deeply impressed with the necessity of immediately taking some ground as to the character of my interview with Dr. P.: for I saw that it must become known that I had had such an interview, as I had appointed it, first, by an unsealed note on Tuesday, and on Friday had myself called at his house in open day and ratified the arrangement, and had there been seen and probably overheard by the man-servant; and I knew not by how many persons Dr. P. might have been seen entering my rooms, or how many persons he might have told by the way where he was going. The interview would in all probability be known; and I must be ready to explain it. The question exercised me much; but on Sunday my course was taken. I would go into Boston, and be the first to declare myself the person, as yet unknown, with whom Dr. P. had made the appointment. I would take the ground, that I had invited him to the College to pay him money, and that I *had* paid him accordingly. I fixed upon the sum by taking the small note and adding interest, which, it appears, I cast erroneously.

If I had thought of this course earlier, I should not have deposited Pettee's check for $90 in the Charles River Bank

on Saturday, but should have suppressed it as going so far towards making up the sum which I was to profess to have paid the day before, and which Pettee knew I had by me at the hour of the interview. It had not occurred to me that I should ever show the notes cancelled in proof of the payment; if it had, I should have destroyed the large note, and let it be inferred that it was gone with the missing man; and I should only have kept the small one, which was all that I could pretend to have paid. My single thought was concealment and safety. Everything else was incidental to that. I was in no state to consider my ulterior pecuniary interests. Money, though I needed it so much, was of no account with me in that condition of mind.

If I had designed and premeditated the homicide of Dr. P. in order to get possession of the notes and cancel my debt, I not only should not have deposited Pettee's check the next day, but I should have made some show of getting and having the money the morning before. I should have drawn my money from the bank, and taken occasion to mention to the cashier, that I had a sum to take out that day for Dr. P., and the same to Henchman, when I borrowed the $10. I should have remarked, that I was so much short of a large sum that I was to pay to Parkman. I borrowed the money of Henchman as mere pocket-money for the day.

If I had intended the homicide of Dr. P., I should not have made the appointment with him twice, and each time in so open a manner that other persons would almost certainly know of it. And I should not have invited him to my room at an hour when the College would have been full of students and others, and an hour when I was most likely to receive calls from others; for that was an hour — just after the lecture — at which persons having business with me, or in my rooms, were always directed to call.

I looked into my rooms on Sunday afternoon, but did nothing.

After the first visit of the officers, I took the pelvis and some of the limbs from the upper well, and threw them into the vault under the privy. I took the thorax from the well below, and packed it in the tea-chest, as found. My own impression has been, that this was not done till after the second visit of the officers, which was on Tuesday; but Kingsley's testimony shows that it must have been done sooner. The perforation of the thorax had been made by the knife at the time of removing the viscera.

On Wednesday, I put on kindlings and made a fire in the

furnace below, having first poked down the ashes. Some of the limbs — I cannot remember what ones or how many — were consumed at that time. This was the last I had to do with the remains.

The tin box was designed to receive the thorax, though I had not concluded where I should finally put the box. The fish-hooks, tied up as grapples, were to be used for drawing up the parts in the vault, whenever I should determine how to dispose of them. And yet, strange enough, I had a confused double object in ordering the box and making the grapples. I had before intended to get such things to send to Fayal; — the box to hold plants and other articles which I wished to protect from salt water and the sea air, — and the hooks to be used there in obtaining coraline plants from the sea. It was this previously intended use of them that suggested and mixed itself up with the idea of the other application. I doubt, even now, to which use they would have been applied. I had not used the hooks at the time of the discovery.

The tan put into the tea-chest was taken from a barrel of it that had been in the laboratory some time. The bag of tan brought in on Monday was not used, nor intended to be used. It belonged to a quantity obtained by me a long time ago for experiments in tanning, and was sent in by the family to get it out of the way. Its being sent just at that time was accidental.

I was not aware that I had put the knife into the tea-chest.

The stick found in the saucer of ink was for making coarse diagrams on cloth.

The bunch of "filed" keys had been long ago picked up by me in Fruit street, and thrown carelessly into a drawer. I never examined them, and do not know whether they would fit any of the locks of the College or not. If there were other keys fitting doors with which I had nothing to do, I suppose they must have been duplicates, or keys of former locks, left there by the mechanics or janitor. I know nothing about them, and should never be likely to notice them amongst the multitude of articles, large and small, and of all kinds, collected in my rooms. The janitor had furnished me a key to the dissecting-room for the admission of medical friends visiting the College; but I had never used it.

The nitric acid on the stairs was not used to remove spots of blood, but dropped by accident.

When the officers called for me on Friday, 30th, I was in

doubt whether I was under arrest, or whether a more strict search of my rooms was to be had; the latter hypothesis being hardly less appalling than the former. When I found that we went over Cragie's bridge, I thought the arrest most probable. When I found that the carriage was stopping at the jail, I was sure of my fate; and before leaving the carriage, I took a dose of strychnine from my pocket and swallowed it. I had prepared it in the shape of a pill before I left my laboratory on the 23d. I thought I could not bear to survive detection. I thought it was a large dose. The state of my nervous system probably defeated its action, partially. The effects of the poison were terrible beyond description. It was in operation at the College, and before I went there; but more severely, afterwards.

I wrote but one of the anonymous letters produced at the trial, — the one mailed at East Cambridge.

The "little bundle," referred to in the letter detained by the jailer, contained only a bottle of citric acid, for domestic use. I had seen it stated in a newspaper, that I had purchased a quantity of *oxalic* acid, which it was presumed was to be used in removing blood-stains. I wished the parcel to be kept untouched, that it might be shown, if there should be occasion, what it really was that I had purchased.

I have drawn up in separate papers an explanation of the use I intended to make of the blood sent for on Thursday, the 22d, and of the conversation with Littlefield about the dissecting vault.

I think that Pettee, in his testimony at the trial, put too strongly my words about *having settled* with Dr. Parkman. Whatever I did say, of the kind, was predicated on the hope I entertained that I should be able to pacify Dr. Parkman and make some arrangement with him; and was said in order to quiet Pettee, who was becoming restive under the solicitation of Dr. Parkman.

Having read the foregoing statement, *Dr. Putnam* proceeded with his own narrative as follows: —

After Dr. Webster had stated most of the facts recorded above, on the 23d of May, with all the earnestness, solemnity, and authority of tone that I was master of, I abruptly addressed him, in substance, thus: — "Dr. Webster, in all probability, your days are numbered. You cannot, you dare not, speak falsely to me now. You must not die with a lie in your mouth, and so prove to yourself, that your repentance

for the sins of your life is insincere and ineffectual. Tell me the truth, then, in a confidence to be kept sacred during your lifetime, and as much longer as my regard for the happiness of your family shall seem to me to require, and the interest of truth and justice to permit. Search to the bottom of your heart for the history of your motives, and tell me, before God, Did it never occur to you, before the death of Dr. Parkman, that his death, if you could bring it to pass, would be a great advantage to you, or, at least, that personal injury to him might possibly be the result of your expected conference with him? As a dying man, I charge you to answer me truly and exactly, or else be silent. — Had you not such a thought?" "No, never," said he, with energy and feeling. "As I live, and as God is my witness, never! I was no more capable of such a thought, than one of my innocent children. I never had the remotest idea of injuring Dr. Parkman, until the moment the blow was struck. Dr. Parkman was extremely severe and sharp-tongued, — the most provoking of men; and I am irritable and passionate. A quickness and brief violence of temper has been the besetting sin of my life. I was an only child, much indulged, and I have never acquired the control over my passions that I ought to have acquired early; and the consequence is — all this." "But you notified Dr. Parkman to meet you at a certain hour, and told him you would pay him, when you knew you had not the means of paying him?" "No," he replied; "I did not tell him I should pay him; and there is no evidence that I told him so, except my own words spoken after his disappearance, and after I had taken the ground that I had paid him. Those words were one of the miserable tissue of falsehoods to which I was committed, from the moment I began to conceal the homicide. I never had a thought of injuring Dr. Parkman."

Having finished reading his notes of the statement made by Dr. Webster on the 23d of May, *Dr. Putnam* then submitted the following Supplementary Explanations of various occurrences testified of at the trial, which had been reduced to writing by the Professor himself.

My having sent Mr. Littlefield for blood, has been brought forward and made to produce an influence against me.

I have had occasion to use blood, every year, both in lectures and for the study of its chemical properties and of the effects of chemical agents upon it. It has been obtained for

me, most commonly, by some student; I having requested any one who might have occasion to bleed a patient, to save some of the blood, which he has brought to me, or left on my table shortly afterwards. I have also before sent for it to the Hospital.

Littlefield is mistaken in his statement, that I said I wanted the blood for my lecture of the following day. He must have misunderstood me, or have allowed himself to imagine, since my arrest, that I said so. My expression was, that I wanted it to make some experiments for my *lectures;* as was the fact. These experiments I proposed to exhibit when lecturing upon blood, in connection with Animal Chemistry. Had it been procured, I should have used a part of it, however, at that time, to show the effect of oxygen gas upon it which I was about preparing, and also of heat. But the object I had in view was particularly connected with the revision of my lecture on the blood.

It has been my habit to revise every one of my lectures every year. There are upwards of sixty written lectures in my course. During the year, in the course of my reading, I am in the habit of making memoranda of any new facts, discoveries, and experiments announced in the various scientific journals or new works on chemistry, which may appear of sufficient importance to be introduced into, or referred to in my lectures for the coming winter.

A few months before the lectures are to commence, I begin the revision of my whole course, posting up, as it were, the various subjects to that time. I take each lecture in the order in which it is to be delivered, and revise it fully, introducing any of the new facts, theories, and experiments that may appear important; and sometimes so many new results have been arrived at, that a lecture upon some subject must be entirely re-written. Many of the new statements, theories, and results, I satisfy myself about, by experiments; and repeat and familiarize myself with new experiments which I may wish to show in the lectures in the winter. Having every convenience and materials in my laboratory in Boston, and none, of any extent, at home, I often go to the Medical College during the summer, and while no lectures are going on, and make the experiments or examinations required.

In consequence of much of my time having been occupied during the summer of 1849 in removing all my minerals to the cabinet in Cambridge, and in the entire new arrangement of the whole of the very extensive collection, and in my lectures on Mineralogy and other engagements, I had not com-

pleted the revision of my lectures on Chemistry, at the time the medical course commenced.

There remained some six or eight lectures to be revised, and these were upon Organic Chemistry, — the Chemistry of plants and animals. Upon the revision of these I was engaged at the very time of my arrest. The lectures upon Milk, Urine, Blood, &c., were upon my table in my study, and would have been found there by the officers, when, on the following day, they made search. A few days after this, I directed my daughters to place those lectures in a cupboard under my book-cases; and they removed them from the table, and placed them, with the revised lectures, in this cupboard, which was always used for this purpose.

I had been much interested in certain views recently advanced, in regard to the development of electrical currents in animals and the effect of the contact of acid and alkaline fluids in producing such currents, which had been applied to the explanation of certain phenomena connected with animal life; — on the development of these currents by the contact of the blood and muscle of animals, &c. One of the experiments on this subject which I had some time previously determined to try, was to make a pile of pieces of pasteboard and animal muscle, the pasteboard being soaked in blood; for it had been announced, that, with such an arrangement, currents of electricity would be established from the blood to the muscle. This I was desirous of putting to the test, and of introducing into the lectures on Animal Chemistry.

Other experiments I had also noted for verification; such as the change of properties in fibrine by some chemical agents; — the effect of heat upon it; and the ascertaining, if, after this, it would absorb oxygen gas and give out carbonic acid, or would have lost that property. Several other experiments would also have been made, and I was therefore desirous of having sufficient blood to operate upon.

These are the facts in relation to my having sent for blood. It was wanted for *my lectures;* but I did not say that I wanted it for my *next lecture.*

In regard to the gas from the vault, I was desirous to examine it, as it had been very offensive. Not only was it perceived in the lower laboratory, but it penetrated up into the lecture-room, and often by the pipe that conveyed the heated air for warming the room. I had suggested modes of correcting this, and of purifying the air every year; and recently had recommended the use of sulphate of iron. I mentioned

this, I am confident, to Dr. Bigelow, senr., and probably to others of the Faculty, and to Dr. Ainsworth, the Demonstrator. I advised the janitor to get twenty-five pounds of the sulphate, (common copperas,) to dissolve it, and to throw it down the vault. I was moreover very curious to ascertain what gases were evolved from the animal matter in the vault, to which the *sea-water gained admission*, and to discover if the products of decomposition were modified by this circumstance. I was the more desirous of examining this mixture of gases, as the attention of medical men and the public had been so recently turned to the consideration of the effects of the gases from cemeteries upon health, and many startling statements had been made, especially in London. It was one object with me to make experiments upon the gases with various chemical agents, for the purpose of arriving at the cheapest and simplest method or material for neutralizing their injurious effects. To ascertain if the gases would support combustion, I suggested putting a lighted candle down the vault; and for collecting the gas, to fill a bottle with water and invert it; the gasses would take the place of the water, and could then be subjected to experiment.

My having appointed to meet Dr. Parkman at the time I did, and the fact that I sent a billet to him, have been brought forward to my disadvantage; whereas they ought to have had an entirely different effect, and will, I trust, be found to be circumstances in my favor. That I should have desired Dr. Parkman to call on me at an hour and in a place where more than an hundred persons were assembled, while individuals were always passing in or out, — where his entrance must be seen, — where our interview was liable to interruption by persons calling upon me, or by students, — must make it obvious that I had not the most distant idea of injuring him.

Dr. Parkman had not only frequently called upon me, and interrupted me in my operations before a lecture, when I had no time at command, but had come to me during my lecture; — sometimes coming up from the lower room and entering behind me; at other times coming before the lecture closed, taking a front seat, and immediately on my finishing the lecture, coming round and asking for money. He went to Cambridge several times, and always stopped me in the street when he met me in the city, and always demanding money or reminding me of my debt to him. He had left me in a state of great excitement, and with threats, the day before I wrote the billet which I gave to Littlefield to take to him.

I wrote the billet in haste, merely begging him to give me more time, and not to call during my lecture; but that, if he would wait until after my lecture of Friday, I should then be quite at leisure to talk with him. The billet was handed to Littlefield, not sealed, but hastily folded, and given him. I certainly should not have done this, had my intentions been wrong towards Dr. Parkman. Nor should I have called at his house in the morning, and in presence of his servant have inquired if he received my billet, and if I should see him after my lecture, as I did.

The hour at which I desired Dr. Parkman to call was that which I had long been in the habit of naming to persons as the one when I should be generally disengaged; and I had often told the janitor to name the same to persons calling at the College to see me previous to or during any lecture.

In the course of one of my lectures of the week, on chemical affinity and the changes in the appearance and properties of bodies by their action upon each other, I used a quantity of nitric oxide gas, which, after standing over water for some time, is colorless; on mingling it with equally colorless oxygen, the mixture becomes of a very deep yellow color, a new gas being formed, which new gas has also a new property; viz., of being absorbed by water. To exhibit this, I prepared a quantity of the gas by the action of nitric acid upon copper. Great heat is developed during the action, and the glass retort containing the materials is very liable to crack. The action of the acid upon the copper gives rise to a green liquid; viz., nitrate of copper.

This process is one I have been in the habit of conducting several times each year, not only for obtaining the gas, but also the nitrate of copper,—a salt in much use for various chemical purposes. The green liquid I was accustomed to pour out into an earthen evaporating dish, to evaporate on the sand bath, and crystallize. Whenever the retort cracked from the heat, I invariably took it quickly out of the room, on account of its unpleasant odor and its injurious effect upon any brass or metallic apparatus, of which there was much in the room. I ran with the cracked retort down stairs, and threw it, with its contents, into one of the sinks or furnace ash-pits. It was from the nitrate dropping from the cracked retort that the spots of green liquid were produced upon the stairs.

The bunch of filed keys which was found, was picked up by me in Fruit street one afternoon during the summer, as I

was going to the College; and was carelessly thrown aside on entering my room, and was never thought of again, until, upon their meeting my eye some time after, I took them up, and was about throwing them out of the window, when it occurred to me they might be found and applied to improper use; I therefore put them in a cupboard in the back room. I had not seen them for months until they were produced in Court; and I had never applied one of them to any lock.

The key of the dissecting-room had been brought to me by the janitor, in consequence of my having taken a friend who was desirous of seeing the rooms, museum, &c., to the dissecting-room, to which we were unable to gain admission, — the lock upon the door being a peculiar one. Mentioning this to the janitor afterwards, and that I might have occasion to show the rooms to some friend or stranger, he brought me this key. It was hung up, and I never had occasion to use it, and never have done so.

There were many brass keys in my drawer, some of which, it appeared, fitted locks upon various doors; but of which I was previously wholly unaware. I was entirely ignorant that there was any key that would fit the lock of either of the front doors of the College. Had I been aware that there was among those keys one by which I could enter either of those doors, I should have put it upon the bunch I carried with me. I have often gone to the College with my bunch of keys, and been obliged to wait some time after ringing the bell, until some one came and unlocked the door. I never opened either of these doors with a key in my possession.

When the College was built, locks more or less similar to each other were put into the many doors; and, finding that my rooms could be entered by means of several keys, and fearing derangement and injury to my apparatus, I caused other locks to be put upon several of the doors.

There are three doors in the lecture-room, each of which had originally one lock; on two of these doors I had a second lock put. The three keys of the original lock being alike, I needed but one on my bunch; the others were laid aside in a drawer. Upon the door between the lecture-room and back laboratory, I also had a second lock put, about a year before November last. I afterwards had the lock taken off, and procured three locks alike, for the three doors in the back room; one key, which fitted all three locks, I put upon my bunch; the others, together with the old key, were laid aside in my drawer.

In the lower laboratory are five doors. These all have locks, the duplicate keys to which were laid aside with the others.

As the College is open often, at times and seasons when there are no lectures, and as not only students but strangers and many persons visit it when I am absent, and as it was desirable that there should not be free access to my rooms, containing valuable apparatus and costly chemical articles, — I had the additional locks put on, leaving the *lecture-room* accessible; this being the only room of much interest to strangers who might wish to see the arrangements in the new College.

The changes and additions of so many locks caused the accumulation of old and duplicate keys; and I have never used one of those keys to open any doors in the building, except those in my own room. I have more than once, in going round with some friend or stranger, had to wait at the door of the museum or library, or some other door, until I called the janitor or his wife to bring the key, which I should not have done had I been aware that I had a key that would admit us.

On the morning of Friday, November 30th, as I was leaving home, Mrs. Webster desired me to bring with me, on my return, some citric acid for domestic use. I purchased some at Thayer's, under the Revere House, waited in his shop until the omnibus came along, took the parcel, jumped into the omnibus, and delivered it into the hands of Mrs. Webster on my arrival at home.

In consequence of seeing a paragraph in a newspaper, a few days after my arrest, stating that I had purchased oxalic acid for the purpose of removing blood-stains, I wrote to my daughter, desiring her not to have the parcel of citric acid opened, as I supposed it was the purchase of that which gave origin to the paragraph; and I knew, if it were untouched, the false statement could be disproved. It was not opened, and was taken to Court by one of my daughters; but it was not called for, or any opportunity given for explanation.

The tea-chest was not sent in that week, but had been in the lower room several months; having been sent on from New York with glass.

The tan had been in the laboratory two years, having been furnished, with two prepared skins, by Mr. Southwick, 50, Fulton street, Boston, for the purpose of making experiments on a new method of preparing leather. There were two

large bags of tan, and two skins; these were sent to Cambridge by Mr. S.; — the experiments I made there, using but a small part of the tan. In 1848, I sent one bag into Boston, thinking it might come in use for some other chemical purpose. The other bag was left in a room over my wood-house, and was never opened. At the time I was sending in the grape vines, Mrs. Webster remarked that the bag of tan was in the way, and wished I would send it in to my laboratory, as I had done with the other bag; and I did so, but without any expectation or idea of using it in any way.

The grape-vines were sent to my room solely for the purpose of burning and procuring the ashes, to apply, as an experiment, to the vines in my garden. Much had been published and said of the effect of applying the ashes of a plant to the same plant in a growing state. The year before, I had saved all the trimmings of my vines, and burned them in a small stove in the garden. I left the stove to cool, and on my return found, to my disappointment, that an Irishman who worked in the garden had cleared out the stove and thrown away the ashes. To avoid a similar accident, I concluded to burn the vines the next autumn in a stove in my laboratory: — for this purpose were they sent in.

Dr. Putnam, having read or referred to the foregoing confessional or explanatory statements, then proceeded to address an argument to the Committee in favor of the commutation of the prisoner's sentence.

The Committee, after hearing all that Dr. Putnam had to urge, took time to deliberate; and, at the request of various persons, heard other statements, and received various petitions on the prisoner's behalf, at three more public sittings; viz., July 5th, 8th, and 18th. On the 5th, Mrs. Webster, the wife of the prisoner, and three of her daughters, accompanied by another female friend and the Rev. Dr. Putnam, waited upon the Committee and his Excellency, and were fully heard in their solicitations for clemency. On the 8th, various gentlemen appeared before the Committee as advocates of a commutation, or to give testimony to points considered material by the petitioners: among them were the Rev. Charles and John M. Spear, the Rev. James Ritchie, Drs. Edward Jarvis, John S. Flint, and Charles N. Winship, Professor Jeffries Wyman, and Francis Bowen, Esq.

At this hearing, the Lieutenant Governor submitted to the Committee the following additional communication received from Professor Webster: —

BOSTON, JULY 6TH, 1850.

Hon. John Reed, Chairman of the Committee on Pardons of the Honorable Council:

The Subscriber having read a statement in the newspapers of this date, that there is no pipe conveying the Cochituate water to the place in the Medical College where he stated that it was allowed to flow over the parts of the body of Dr. Parkman, and desirous that all the facts should be known, begs leave respectfully to present the following:

In the small private room is a large reservoir for water, capable of holding several barrels of water. From this reservoir the water was drawn when wanted, through a lead pipe, issuing from the bottom of the reservoir, terminated by a cock. This pipe is on the right hand; and on the same side, in the corner of the sink, below the reservoir, is an exit-pipe which passes down through the floor, and in the angle formed by the wall of the furnace that warms the lecture-room and the partition separating the lower laboratory from the dissecting-room entry.

The reservoir was filled with water in October, preparatory to other arrangements for the lectures. It was filled by attaching one of the long flexible hoses, kept in the College, to the Cochituate-water pipe. Very little of the water had been drawn from the reservoir, as the sink in the small room was used only as a place for washing my hands.

It was the water from this reservoir which was first used and allowed to flow over parts of the body. After some of the discolored water had been found to escape from the sink and not to pass freely down the exit pipe, the pipe appeared to be obstructed. The exit pipe passes down through the floor in the corner, and, on examination, the ceiling of the laboratory below was found to be stained. This stain probably remains, although, from the action of the lime, it may have been rendered fainter than at first. That it escaped the notice of the officers and others who examined the lower laboratory, must have been owing to the circumstance that attention was not directed to anything above, but to the furnace immediately below.

As some water remained in the reservoir and the cock was not tight, I placed a pail under it to receive the droppings and prevent more water passing down the exit pipe.

The well in the lecture table was kept full by a hose connected with the Cochituate-water pipe on the left of the door between the two rooms. Two short hoses have always been kept in the upper laboratory, to be connected with this pipe and with each other, when water was required in or upon the lecture table.

From the well in the lecture table, the discolored water flowed through a cock below, into a wooden conductor running along the ceiling of the room below. This water was delivered into the sink near the stairs. An examination of the well and conductor may yet confirm what is stated.

From the Cochituate-water pipe over the sink in the lower laboratory, water was conveyed into the well in the table in that room. The discolored water was allowed to flow from the cock below, directly under which there has always been an aperture in the floor, for the passage of water from this well, when it became necessary to change it.

In consequence of some imperfection in the pewter cock of this well, the discolored water flowed out faster than it escaped through the aperture in the floor; the water was allowed to run from the hogshead near by for the purpose of cleaning the floor of the colored water from the well, and, on leaving the room, the water was left running. As the discolored water from the well seemed likely to spread, and might, I thought, even extend outside the room, I removed several pails full, and poured it into the sink upon the floor. To remove any traces of it from the sink, I laid a spout from one of the hogsheads and let clean water flow from it into the sink.

With great respect,

J. W. Webster.

On the 18th, the Committee were further addressed on behalf of the prisoner by the Rev. Messrs. Spear, Rev. S. S. Brimblecom, Rev. J. M. Usher, and by Mr. J. Fiske Allen.

On the 19th of July, (the next day,) at a meeting of the Governor and Council, the Committee on Pardons submitted the following unanimous

REPORT.

The Committee on Pardons, to whom was referred the petition of John W. Webster, a convict under sentence of death, praying, in behalf of himself and his wife and children, the Governor and Council to extend to the petitioner a commutation of the punishment awarded to him, — also a copy of the

records of the Court, containing the trial and sentence of said Webster, and also sundry other petitions and arguments referring to or in support of the petition of said Webster,— now report:

That, by said record, it appears that said Webster was regularly indicted for the crime of the murder of Dr. George Parkman, and set to the bar of the Supreme Court at the March Term thereof, A. D. 1850; and there having been inquired of how he would acquit himself concerning the premises, for answer, said he was not guilty, and thereof put himself upon the country. Counsel was thereupon assigned to the prisoner. On the 19th day of March following, said Webster was again set to the bar, to be tried. A jury was empanelled and sworn; and, after a full hearing, they on their oaths declared that the said John W. Webster was guilty. And thereafterwards, viz., on the 1st day of April, in said Court, said Webster being placed to the bar for sentence, it was demanded of him by said Court if he had any thing to say wherefore sentence should not be declared upon the premises and verdict aforesaid. To which said Webster nothing further answered. Thereupon it was considered by the Court, that the said John W. Webster be taken to the jail whence he came, and thence to the place of execution, and there be hanged by the neck until he be dead.

Since the passing of said sentence by said Court, numerous petitions and arguments have been presented to the Executive for the full pardon of said Webster, founded upon the belief and presumption that he never committed even a homicide. Recent events, however, relieve the Committee in a great measure from the consideration of all such arguments and petitions.

On the 2d of July, A. D. 1850, the Rev. Dr. Putnam, by appointment, appeared in behalf of said Webster, before the Committee on Pardons, and read a confession made by said Webster, acknowledging that he committed the homicide, and declaring the manner and circumstances thereof, — and at the same time presented said Webster's petition for a commutation of the sentence aforesaid. The petition and confession were supported by an able argument by Dr. Putnam.

To this confession and argument, and all arguments and evidence supporting it, we have given our most serious and anxious attention, and have proceeded to consider the same with hearts and minds desirous to know the truth and our duty, and with a firm purpose to do what both should require.

It seems to your Committee, that the sentence in the case of said Webster having been passed by the Court after a full and fair trial, in the course of which all the facts and circumstances which could then be brought to light were patiently and thoroughly investigated and weighed by the jury, — and having been fully affirmed after a careful revision of the law, since had by the full Court on solemn argument of both sides, — there remains no ground for Executive interposition, except it may be found in the subsequent confession of the prisoner.

In this view, the only questions, as it seems to us, are, whether the statements which said Webster now makes in his confession, of the manner and circumstance of the homicide, are so confirmed by other evidence, or are so intrinsically probable, that they ought to be received as true; and, if true, whether they justify the Executive in a commutation of the punishment.

To these questions, the minds of the Committee have been most carefully directed, and, as they trust, with no unwillingness on their part to come to an affirmative conclusion, if they could do so consistently with a supreme regard to truth and justice. But after all the consideration which they have been able to bestow upon this confession, and under the light of the evidence and comments with which it has been accompanied and supported, they feel constrained to say, that the effect has not been such as to satisfy their minds that the position of the case is materially changed. In other words, the palliating facts and circumstances set forth in the confession have not been so confirmed by other evidence and circumstances as to form a proper and sufficient basis for Executive interference.

To this painful conclusion the Committee have unanimously come.

The Committee therefore respectfully report, that they cannot, consistently with what they conceive their duty, recommend a commutation of the sentence in the case of John W. Webster, as prayed for in his petition.

Nothing now remains for the Committee, in the discharge of this painful duty, but to advise your Excellency in determining upon a time for the Execution; and they name *Friday the thirtieth day of August next* as the day, and recommend to your Excellency to decide upon that day as the time for the execution of John W. Webster.

JOHN REED, *Chairman.*

Council Chamber, July 19, 1850.

On the question being taken upon the acceptance of this report, the Council voted to accept it; one member only, Mr. Copeland, of Roxbury, voting in the negative.*

Upon receiving the final action of the Council, His Excellency addressed them in the following

COMMUNICATION.

To the Honorable Council:

The Council having considered and acted on the case of John W. Webster, a convict under sentence of death, it becomes my duty, as the Chief Executive Magistrate of the Commonwealth, to make a final decision on a question involving the life of the prisoner. I feel the weight of its responsibility. But it is a responsibility found in the path of official duty, and I am not disposed to evade it, or to shrink from it. For eight months past, this extraordinary case has created a deep and painful interest among the people of Massachusetts, and of the whole Union. Its history is as brief as it is terrible and instructive; every new development in its progress has been more strange, and has increased that interest.

On the 23d day of November, 1849, Dr. George Parkman, a well-known and highly respectable citizen of Boston, left his house and family on business, as was usual for him, and never returned to them. His unexpected absence alarmed his family, and excited the attention of the people in and around Boston. In the course of a day or two, it was understood that the prisoner had said that Dr. Parkman met him at his rooms in the Medical College in the west part of the city, not far from half past one o'clock on the day of his disappearance; and that he then and there paid him a sum of money, which he, Dr. Parkman, took into his hands, and thereupon hastily rushed towards the outer door.

Dr. Parkman was also seen by other persons, about the same time of day, within forty feet of the door of the College, and walking quickly towards it. These, with other circumstances, directed the public mind towards the College buildings. The next Friday, one week after the disappearance of Dr. Parkman, the dismembered parts of a human body were

* The Council consisted of the following members, besides His Honor the Lieutenant Governor: Hon Samuel Wood, Hon. Solomon Davis, Hon. Timothy J. Gridley, Hon. Thomas Tolman, Hon. John Tenney, Hon. Benjamin F. Copeland, Hon. Charles M. Owen, Hon. Samuel L. Crocker, and Hon. Luther V. Bell. Of these, Messrs. Wood, Tenney, Owen, and Bell constituted the Committee on Pardons.

found in different places in and under the rooms occupied by the prisoner in that College, some of them in a furnace, nearly destroyed by fire, some of them packed in a tea-chest, and other parts in the vault of a privy attached to his laboratory.

Suspicions were strongly fixed on him, and he was arrested and committed to Leverett-street jail. A coroner's inquest was called; and after a long examination into the facts of the case, conducted in secret, the jury reported that the remains found were parts of the body of the late Dr. George Parkman; that he came to his death by violence in the Medical College in Boston, on Friday the 23d day of November; and that he was killed by John W. Webster. The evidence taken before the inquest was not given to the public. In January, 1850, the case was laid before the grand jury for the county of Suffolk, and the investigation before that body resulted in the finding of an indictment against the prisoner for the murder of Dr. Parkman.

He was arraigned on the indictment and pleaded not guilty. Two of the most able and distinguished lawyers of the Commonwealth were, upon his own selection, assigned to him as counsel by the Supreme Court, and his trial before the full bench of that Court fixed on the 19th day of March. Some time before the day of trial, the Attorney General furnished the counsel of the prisoner, not only with a list of the names of the witnesses to be called against him, which is required to be done in all capital cases in this Commonwealth, but also with a copy of the testimony taken before the coroner's inquest, and which had been produced against him before the grand jury.

The time appointed for the trial arrived, when four Judges of the Supreme Court were present, and sat during the trial. In pursuance of the provisions of law, sixty jurors had been drawn from the jury box in the county of Suffolk. By law, the prisoner had a right peremptorily, without giving any reason, to challenge twenty jurors, and for good reasons to object to any others whose names might be called. In empanelling the jury who tried him, the prisoner exercised his peremptory right of challenge in only fourteen instances.

The trial was one of surpassing interest and solemnity, and lasted eleven days. On the part of the prisoner, the case was argued with great earnestness, candor, and ability, by the Hon. Pliny Merrick, his senior counsel. After denying that the evidence on the part of the Government was sufficient to prove that the prisoner killed Dr. Parkman at all, the counsel took the ground, that if in any event the jury should come to

the conclusion that he did kill him, then the circumstances of the case were such as to satisfy them that the killing could not have been premeditated, but was the result of an unexpected conflict between the parties and of sudden passion.

This position he endeavored to maintain by an ingenious and powerful appeal to the jury. The case was closed on the part of the Commonwealth by the Attorney General, by an address of singular point and effect. After the Attorney General had finished his argument, the Court informed the prisoner that he had the right, which he might exercise or not, as he pleased, to make such remarks to the jury as he saw fit. The prisoner rose and for some time addressed the jury in his own behalf. An elaborate, clear, and comprehensive charge was given by the Chief Justice, after consultation with the other members of the Court who sat with him at the trial.

The jury retired to their room, and, after an absence of three hours, late on Saturday evening, returned into Court with a verdict of guilty. The next Monday morning the prisoner was again brought into Court, and received from the Chief Justice the sentence of the law, which doomed him to suffer death by hanging, at such time as the Executive of the Commonwealth should appoint.

In a few days a copy of the record of his conviction was transmitted to the Governor and Council, by the sheriff of the county of Suffolk, according to the direction of the statute.

On the 24th of April, the prisoner sent, by the hand of his friend, to the Governor and Council, a petition for pardon, under his own hand, on the ground of his entire innocence of the crime of which he had been convicted, and for which he was under sentence of death. All proceedings on this petition before the Executive were suspended in consequence of having received notice from the counsel of the prisoner that they were about to make application to the Supreme Court for a writ of error to be issued in his case, on account of certain alleged irregularities which had been discovered in the course of the proceedings against him. That application was heard before the full Court and overruled.

In the opinion of the Court upon that application, pronounced by the Chief Justice, all the proceedings in the case are declared to be according to established judicial forms and the laws of the Commonwealth.

On the 4th of June, and before the question on the writ of error had been settled by the Court, the Rev. Dr. Putnam, for

the prisoner, asked to be permitted to withdraw the petition which had been presented to the Governor and Council, for further consideration. This request was complied with by the Governor and Council; and the petition, in a day or two, was handed to Dr. Putnam.

On the first day of July, Dr. Putnam placed in the hands of the Governor another petition signed by the prisoner, asking for a commutation of his sentence.

On the second day of July this petition was referred to the Committee on Pardons, and on the same day Dr. Putnam appeared before them, and made a statement which he said was authorized by the prisoner, in which the prisoner admitted that he killed Dr. Parkman at the time and place charged against him, but denied that the act was premeditated.

He narrated what the prisoner declared to be the manner of killing, and described minutely the mode and process in which the body of Dr. Parkman was disposed of after death.

The prisoner alleges that the "single blow with a stick of wood two feet long and two inches thick," by which Dr. Parkman was killed, was given by him in a moment when "he was excited to the highest degree of passion," and while Dr. Parkman was speaking and gesticulating in the most violent and menacing manner, thrusting the letter and his fist in his face; that in his fury he seized whatever thing was handiest, and that was a stick of wood, and dealt to him an instantaneous blow, with all the force that passion could give, and that "he did not know, nor think, nor care, where he should hit him, nor how hard, nor what the effect would be."

Upon this statement, and upon the other facts proved upon the trial, Dr. Putnam addressed the Committee at length, in an able and impressive argument, in favor of commuting the sentence of the Court. A petition from the family of the prisoner was before the Committee; and a large number of other petitions, some for a full pardon and others for a commutation, were in the hands of the Committee.

Most of these petitions were from people, men and women, in other States, and generally placed their petition for a remission or mitigation of the sentence, on the ground of the great doubts of the prisoner's guilt. The Committee gave three hearings after the meeting at which Dr. Putnam addressed them, and listened to those who desired to be heard in aid of the prisoner's petition, and in support of Dr. Putnam's views.

The Committee on Pardons, consisting of the Lieutenant

Governor and four other Councillors, after a full, careful, and patient hearing of all that could be offered by the friends of the prisoner and by others, who were pleased to be heard in his behalf, came to the unanimous opinion that there were no sufficient reasons to justify them in recommending the interposition of Executive clemency.

They recommended that the Governor be advised to have the sentence of the law, as pronounced by the Court, carried into effect on the 30th day of August next.

The Council, with but one exception, concurred with the report of the Committee, and advised the Governor to carry out the sentence of the Court as recommended by them.

In carefully and anxiously examining and considering the case, I do not feel authorized by any considerations which have been presented to my mind to set aside the deliberate verdict of the jury, arrest the solemn decree of the law as pronounced by the highest judicial tribunal of the Commonwealth, and disregard the opinion and advice of the Council.

If the circumstances of the killing, as stated by the prisoner, are taken to be true, it may be well questioned, whether the Executive Council could interfere with the sentence without violating the settled laws of the land.

In his charge to the jury in this case, the Chief Justice says: "It is a settled rule that no provocation with words only will justify a mortal blow. Then, if upon provoking language the party intentionally revenge himself with a mortal blow, it is unquestionably murder."

The only new fact brought to light as to the killing, depends upon the word of the prisoner. It will hardly be pretended by any one, that the declaration of a person under sentence of death should be permitted to outweigh the doings of the Court and jury, and rescue him from the consequences which are to follow their proceedings.

It is candidly stated by Dr. Putnam, in his able argument, and by several of the petitions presented in favor of commutation, received since his confession, that, standing as he does, the word of the prisoner is entitled to no credit.

If the circumstances disclosed on the trial are relied on to support his statement, the reply is, that those circumstances were urged in his favor before the jury, and they have decided against him. The facts of this appalling case are before the world, and they will hereafter fill one of the gloomiest pages in the record of crime amongst civilized men.

It is undisputed, that on the 23d day of November, 1849, John White Webster, a Professor in Harvard University, and

in the Medical College in Boston, did at mid-day, in his room, in that College, within a few feet of the place where he daily stood and delivered scientific lectures to a large class of young men, with unlawful violence take the life of Dr. George Parkman, a respectable citizen of Boston, who had come to that room at the repeated requests of the prisoner:

That, after taking his life, he eviscerated, and, in a manner most shocking to humanity, mutilated the body of his victim, burning parts of it in a furnace, and depositing other parts of it in different places in the building, where they were found by persons who were seeking after Dr. Parkman:

That, after killing him, he robbed his lifeless creditor, by taking from him two notes of hands, signed by himself, to which he had no right, and committed still another crime by making false marks upon those notes; and that a jury of his country, empanelled according to law, under the direction of four of the five eminent judges constituting the Supreme Judicial Court of Massachusetts, after a long, patient, and impartial trial, and after hearing in his defence the arguments of learned and eloquent counsel, upon their oaths, found him guilty of murder.

Upon that verdict, the Court pronounced the awful sentence of death. In such a case, there should be obvious and conclusive reasons to authorize the pardoning power to interpose and arrest the sword of Justice. I do not see these reasons.

The combined circumstances of the case force me to the conclusion, that the safety of the community, the inviolability of the law, and the principles of impartial justice, demand the execution of the sentence.

I hope it is not necessary for me to say that it would have given me unspeakable pleasure to come to a different result, and that I would do anything on earth in my power, short of violating duty, to alleviate the sufferings of a crushed and broken-hearted family.

GEO. N. BRIGGS.

Council Chamber, 19*th July*, 1850.

Pursuant to the above determination of the Executive, a warrant for the execution of the prisoner, of which the following is a copy, issued on the next day, the 20th of July:—

THE COMMONWEALTH OF MASSACHUSETTS.

To Joseph Eveleth, Esquire, Sheriff of our County of Suffolk,

GREETING:

(Seal.)

(Signed) GEO. N. BRIGGS.

Whereas, at the term of the Supreme Judicial Court, begun and holden at Boston, within the county of Suffolk, and for the counties of Suffolk and Nantucket, on the first Tuesday of March, being the fifth day of said month, in the year of our Lord one thousand eight hundred and fifty, JOHN W. WEBSTER, of Cambridge, in the county of Middlesex, was convicted of the crime of murder, and was thereupon by our said Court sentenced to suffer the pains of death, by being hanged by the neck, until he shall be dead; all which, by an exemplification of the record of the said Court, which we have caused to be hereunto annexed, doth to us fully appear:

We therefore command you, that, upon Friday the thirtieth day of August, one thousand eight hundred and fifty, between the hours of eight and eleven o'clock before noon of the same day, within the walls of the prison of the said County, or within the inclosed yard of the prison of the said County of Suffolk, agreeably to the provisions of the one hundred and thirty-ninth chapter of the Revised Statutes, you cause execution of the said sentence of our said Court, in all respects to be done and performed upon him, the said John W. Webster; for which this shall be your sufficient warrant.

Whereof fail not at your peril, and make return of this warrant, with your doings thereon, into our Secretary's office, within twenty days after you shall have executed the same.

Witness His Excellency, George N. Briggs, our Governor, with the advice and consent of our Council, and our seal hereunto affixed, the nineteenth day of July, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States of America, the Seventy-Fifth.

By His Excellency the Governor, by and with the advice of the Council.

W. B. CALHOUN,
Secretary of the Commonwealth.

The foregoing warrant was read to the prisoner by Sheriff Eveleth on the 22d day of July; and on the 30th day of August, 1850, was duly executed on him by that officer, by hanging him on the gallows, as appears by his return made to the Executive upon the back of the warrant, of which the following is a copy:

Suffolk, ss.

Boston, August 30th, 1850.

By virtue of the within warrant to me directed, and in obedience to the command therein contained, I, this day, between the hours of eight and eleven before noon, — to wit, at twenty minutes before ten o'clock before noon, of the said thirtieth day of August, eighteen hundred and fifty,— within the inclosed yard of the prison of the county of Suffolk aforenamed, and in the presence of the persons hereinafter named, did cause the sentence of death in said warrant named to be executed upon JOHN W. WEBSTER, of Cambridge, in the county of Middlesex, the person named in said warrant convicted of the crime of murder, *by causing the said John W. Webster, convict as aforesaid, to be hanged by the neck until he was dead;* and the said sentence was then and there executed upon the said John W. Webster, in accordance with the provisions of the one hundred and thirty-ninth chapter of the Revised Statutes of the Commonwealth of Massachusetts, in all respects.

And after the fact that life was extinct in the body of the said John W. Webster, and that the said John W. Webster was dead, had been formally certified to me by Doctors Henry G. Clark and Charles H. Stedman, surgeons, who were in attendance at my request, I caused the dead body of said John W. Webster, at ten minutes past ten o'clock, A. M., of the same day, to be inclosed in a coffin and removed from public view; and, at thirty minutes past eight of the clock in the evening of the same day, I caused the dead body of the said John W. Webster to be delivered to his relatives for interment, in accordance with the request of the said John W. Webster, made to me on the twenty-eighth instant.

I also certify, that, several days previous to the day named in said warrrant for the execution of the sentence therein named upon the said John W. Webster, I addressed letters to the Attorney General of the Commonwealth aforesaid, and to the said Commonwealth's Attorney for the county of Suffolk, and also to the Clerks of the Courts for the said county of Suffolk, informing them severally of the time and place

when and where the execution of the said sentence upon said John W. Webster would take place, and respectfully requesting them severally to be present at said execution.

I also summoned the following named persons, holding commissions under me as Deputy Sheriffs, to be present at the time and place named in the written summons served upon each of them, namely, at seven o'clock, A. M., on the said thirtieth day of August, and at the office of the prison before named; and they, the said Deputy Sheriffs, were severally present at the time and place named, and assisted me in the execution of the command in the warrant aforenamed; viz., Watson Freeman, Daniel J. Coburn, Jabez Pratt, Erastus Rugg, Benjamin F. Bayley, and Joseph A. Willard.

I also, in pursuance of the provisions of said statute, addressed letters to the persons hereinafter named, being twelve and more respectable citizens of the said county, requesting them severally to be present at the office of the prison of the county of Suffolk aforenamed, at eight o'clock before noon of the said thirtieth day of August, to witness the execution of the said sentence of death upon the said John W. Webster, convict as aforesaid;* and they severally were present, and each and all of them witnessed the execution of the said sentence of death upon the said John W. Webster, according to the terms of the aforementioned warrant, and pursuant to the provisions of the statute hereinbefore named.

And the names of said persons follow, to wit: B. Franklin Edmands, Isaac H. Wright, James Dennie, Newell A. Thompson, Isaac Adams, J. Putnam Bradlee, Ezra Lincoln, Robert Cowdin, Peter T. Homer, William Schouler, Henry N. Hooper, Thomas Gill, John T. Heard, William Beals, William Barnicoat, Henry Crocker, James Cheever, Charles Larkin, Joseph Smith, B. Perley Poore, Osmyn Brewster, Pearl Martin, Thomas W. Robinson, David Chapin, Hamilton Willis, Benjamin Adams, and Peter Harvey, — all of the county of Suffolk, Esquires.

And there were also present at the execution of said sentence of death, two surgeons hereinbefore named. And, at the request of said John W. Webster, I permitted the Rev-

* The provisions of the statute referred to are the following: — "The sheriff shall be present at the execution, unless he shall be prevented by sickness or other casualty, and also two of his deputies, to be designated by him; and he shall request the presence of the district attorney, clerk or clerks of the county courts, and twelve reputable citizens, including a physician or surgeon; and he shall permit the counsel of the criminal, such ministers of the gospel as the criminal shall desire, and his relations, to be present, and also such officers of the prison, deputies and constables, military guard, or other assistants, as he shall see fit." — *Rev. Stat. c.* 139, *sec.* 14.

erend George Putnam, D.D., to be present at said execution.

And I also informed the counsel of said John W. Webster, that they, the said counsel, and the relatives of said John W. Webster, might be present at said execution, according to the provisions of said statute, if they saw fit.

And there were also present at said execution, by my order, such officers of the jail, constables, policemen, and other assistants, as in my judgment were expedient and necessary to insure the preservation of order and decorum in and about the yard of said prison and the neighborhood thereof.*

JOSEPH EVELETH,
Sheriff of Suffolk County.

* The original warrant, with the above return, was deposited by the sheriff in the Secretary of State's office on the 9th of September following; and, on the same day, he filed a certified copy thereof in the clerk's office of the Supreme Judicial Court, pursuant to the following statutory provision:—Rev. Stat. chap. 139, sec. 15. "Whenever a sheriff shall inflict the punishment of death upon any convict, in obedience to a warrant from the governor, he shall make return thereof under his hand, with his doings therein, to the secretary's office, as soon as may be, and shall also file in the clerk's office of the court where the conviction was had, an attested copy of the warrant and return; and the clerk shall subjoin a brief abstract of such return to the record of the conviction and sentence."

APPENDIX.

FINDING OF THE CORONER'S JURY.

Suffolk, ss.

An inquisition, taken at the city of Boston, within the county of Suffolk, the thirteenth day of December, in the year of our Lord one thousand eight hundred and forty-nine, before *Jabez Pratt, Esquire*, one of the Coroners of said county, upon the view of sundry parts of the body of a dead man, viz., a thorax, kidneys, pelvis, two thighs, left leg, and sundry bones, there lying dead, by the oaths of *Osmyn Brewster, John L. Andrews, Pearl Martin, Thomas Restieaux, Lewis Jones*, and *Harum Merrill*, good and lawful men, who, being charged and sworn to inquire for the Commonwealth, when, how, and by what means, the said dead man came to his death, upon their oaths do say: — That they all have been demonstrated to be parts of one and the same person.—That these parts of the human frame have been identified and proved to be the remains and parts of the dead body and limbs of Dr. George Parkman, late a citizen of said Boston, aged about sixty years.—That he came to his death by violence, at said Boston, on the 23d day of November last, between the hour of one and a half of the clock in the afternoon of that day, (about which time he entered, alive and in good health, into the Massachusetts Medical College building, situate in North Grove street, in said Boston,) and the hour of four of the clock in the afternoon of the thirtieth day of November last, (when a portion of the said remains were found concealed in and under the apartments of Dr. John W. Webster, of Cambridge, in the County of Middlesex, in said College building,) in which building the residue of said remains were afterwards discovered.—That he was killed, in said College building, by a blow or blows, wound or wounds, inflicted upon him with some instrument or weapon to the Jurors unknown, and by means not yet known to said Jurors; and that said blow or blows, wound or wounds, were inflicted upon him, and said means were used, by the hands of said Dr. John W. Webster, by whom he was killed.

In witness whereof, the said Coroner and Jurors to this inquisition have set their hands and seals, the day and year abovesaid.

Jabez Pratt, *Coroner.*	Thomas Restieaux.
Osmyn Brewster, *Foreman.*	Lewis Jones.
John L. Andrews, *Secretary.*	Harum Merrill.
Pearl Martin.	

SECRETARY'S JOURNAL.

Inquest held by Jabez Pratt, Esquire, Coroner, this first day of December, A. D. 1849, at the Medical College, Grove street, upon

a body supposed to be the body of George Parkman, there lying dead; and by adjournment to the same place on Monday, the third day of December, and also by an adjournment to the Ward Room, on Wednesday, December 5th, 1849. Wednesday, December 5th, the Jury of Inquest met and sat until 7 1-2, P.M., and adjourned to Thursday, at 3, P. M. — Met at 3, P.M., and adjourned to meet at room No. 15, in the Court house, on Friday, 7th inst., at 10 o'clock. — Met on Friday, December 7th, and adjourned to meet on Saturday, December 8th. — Met at 9 o'clock, A.M., on Saturday, and adjourned to meet on Monday, December 10th, at 9 o'clock, A.M. — Met on Monday, December 10th, and adjourned to Tuesday, December 11th, at 9 o'clock, A.M. — Tuesday, 9, A.M., met according to adjournment, and adjourned to meet on Thursday, December 13th. — Met according to adjournment, and finished the evidence and rendered the verdict. On each of the days, except December 6th, the Jury met at 9 o'clock, and continued through the day, until near 7 o'clock, P.M.

JOHN L. ANDREWS, *Secretary*.

As the holding of the sessions of the coroner's inquest in private has been made the subject of much comment, we subjoin the opinion of the Commonwealth's Attorney for Suffolk County, Samuel D. Parker, Esq., given to the inquest at their request, upon the subject. It will be seen by it, that, in addition to the concurrence of Mr. Parker in the propriety of the course afterwards adopted, pains were taken by him to inquire of the prisoner's counsel beforehand, if he had any objections to such a course; and that the only legal gentleman then acting professionally on his behalf professed himself indifferent as to which course the jury should adopt. The reader will also have noticed, from the Attorney General's statement in his closing address to the jury, p. 430, that he caused a copy of all the evidence taken before the inquest, immediately after the close of their session and before he had time to peruse it himself, to be furnished to the prisoner's counsel.—REP.

COMMUNICATION OF THE COUNTY ATTORNEY TO THE CORONER'S INQUEST ON THE PROPRIETY OF A SECRET SESSION.

It being now ascertained that the Attorney General is where a telegraphic communication cannot be made to him, I will express my opinion upon the points proposed to me.

The powers and duties of the Coroner depend in Massachusetts upon the statute law, and are very different here from what they are in England by the common law. The 140th chapter of the Revised Statutes is very explicit in many particulars, but is silent upon some subjects. Much is left to the discretion of the Coroner; and I am of opinion, that it is wholly within the exercise of the sound discretion of that officer, whether the testimony of witnesses should be taken before the jury of inquest publicly or privately.

In some cases, a public examination of the witnesses and a publication of their testimony might defeat the ends of public justice. The 10th section of the chapter cited provides that if any person, charged by the inquest, *shall not be in custody*, the Coroner shall have power *to issue process* for his apprehension. As soon as any

evidence is published tending to implicate a person, he would have, in most cases, an opportunity to escape. In some respects, the inquest of the Coroner's jury resembles the analogous inquiry by the grand jury of the criminal court, which is always secret. Many other evils may be suggested, which may arise in cases of great excitement, from a publication of the testimony as it progresses before the Coroner's jury, and which would be detrimental to public justice, by pre-occupying, and perhaps misdirecting, public opinion, — creating great difficulty in getting an impartial panel of jurors at the trial, and exposing the material witnesses to personal attacks, or attempts at bribery, or inducements to avoid, &c.

I have no doubt of the power of the Coroner to decide whether the examination of the witnesses shall be public or private. It is within his official discretion, to be exercised in each particular case according to the circumstances of that case; and, in this case, it is his privilege and duty to decide the mode of proceeding.

If it is his wish, or the inquest's desire, that I should express my opinion upon the question of expediency on the present occasion, I do not hesitate to advise, that the proceedings before the Coroner's jury be private up to the time of the signing of the verdict. I have consulted several eminent gentlemen of the bar, and several persons in high official station, and there is no difference of opinion; they all concur in the views expressed. I have asked the friends of the deceased, and some of the friends of a person supposed to be interested in these proceedings. I have stated the matter to the eminent counsel of that person. He has no desire to have the examination private, and expressed no desire to have it public, and thought that he should not interfere in any way to affect the Coroner's decision.

SAMUEL D. PARKER,
Attorney of the Commonwealth for County of Suffolk.

In this connection it may be pertinent also to quote the following act of the State Legislature, passed April 2d, 1850, which undoubtedly originated from the discussion connected with this case.—REP.

CHAP. 133, SECT. 1. Whenever an inquisition shall be taken, pursuant to the one hundred and fortieth chapter of the Revised Statutes, the coroner, with the consent of a majority of the jury of inquest, may order that a secret inquisition be taken; and in such case the coroner may, at his discretion, exclude from the place where the inquisition is taken, any or all persons other than those required to be present by the provisions of said chapter; and, during the examination of any witness, may, at his discretion, exclude from the place of examination all the other witnesses; and may also, if he see cause, direct the witnesses to be kept separate, so that they cannot converse with each other until they shall have been examined.

SECOND "CIVIS" LETTER.

(*Postmarked "Boston, March 28th," and addressed "E. D. Sohier, Esq., Member of the Bar, Boston, Mass."*)

Boston, March 27th, 1850.

MR. E. D. SOHIER:

I am very desirous to inform you, that there has been a great mistake made in the testimony of some of the witnesses with regard to that "Civis" letter. Now, I must inform you that I wrote that letter, *myself*. I first saw that letter published in the "Herald" of this evening; and I observed at first sight that the letter had the appearance of having been written by me. But there was one thing about it that looked singular, and that was the signature, which was in the "Herald" as *Silence*, — which was wrong. I signed the letter, "Civis;" and, on seeing the letter in the Journal, I at once recognized it. You can compare this writing with that of the "Civis" letter, and see if it does not exactly resemble it.

With regard to the formation of certain letters, I would remark, that I usually make *d* in this manner: — *d* [with the top curved backwards] — and sometimes thus: *d* [with the top part of the second stroke upright.] In forming the *a*, I make it thus, *a*, *a*, and not *a*, *a*; [the two differing slightly in the regularity of the curves. In making the *w*, I do thus: — *w*, *w*; not *w*, *w*; [the last made as if from a *u*, and the first from an *n*.] *I*'s I make thus: — *I*, *I*, *I*; [with the hair-stroke of the loop crossing over the main stroke of the letter.] *Figures*, — 1, 3, 4, 9, 8, 1, 2, 3, 4, 5, 6, 7, 8, 9, 0.

I positively swear that I wrote that identical letter. My writing may resemble that of Webster's; that I know nothing about. Mr. Webster himself will say positively that he did not write that letter; but, in saying so, he would probably not be believed.

I omitted to remark the manner in which I make the *y*. I make *y*: — *Y*, *y*, *Y*, *Y*, *Y*, *y*, *y*, *Y*; *W*, *A*, *B*, *C*, *D*, *E*, *F*, *G*, *H*, *I*, *J*, *K*, *L*, *M*, *N*, *O*, *P*, *Q*, *R*, *S*, *T*, *U*, *V*, *W*, *X*, *Y*, *Z*; small letters, — *a*, *b*, *c*, *d*, *e*, *f*, *g*, *h*, *i*, *j*, *k*, *l*, *m*, *n*, *o*, *p*, *q*, *r*, *s*, *t*, *u*, *v*, *w*, *x*, *y*, *z*.

I should think you might determine to a certainty whether I wrote that Civis letter, or Webster, from the above. Perhaps it would be as well to re-write some of those words in that letter. I have not a copy of that letter with me.

Dr. Parkman — East Cambridge — Craigie's Bridge, — cellars — necessaries — cut in small pieces — put in a stout bag — firing of cannon — make the body rise, &c. &c. &c.

I am not certain but I wrote that letter in a back-handed style, thus: — *Dr. Parkman — East Cambridge — Craigie's Bridge — cellars — necessaries — cut in small pieces — put in a stout bag — firing of cannon — make the body rise, &c. &c. Boston, Nov.* 1849. *Francis Tukey. Dear Sir — Mass.* [The above in a back hand.]

The great mistake that Mr. Gould, Mr. Smith the engraver, and

others made, most convincingly shows the utter fallibility of human testimony, judgment, inference, &c. When I wrote that letter, I did not think so much notice would be taken of it, as the result proves. I was in the hope that my suggestions would assist the authorities in their search.

I hope you will show this letter to Marshal Tukey and others, and compare it with my handwriting in the Civis letter.

CIVIS.

It will be noticed from the report of Mr. Gould's evidence, *ante*, p. 197, that he testified immediately after the opening of the Court on Wednesday morning, March 27th. The above letter is dated of that day, but not post-marked till the 28th. The prisoner's counsel were at first led to believe that the letter could not have been written or dropped into the post-office by him, through any opportunity afforded for the purpose after Mr. Gould had testified, and before the reception of the letter Thursday morning. But its resemblance to the first Civis letter was so complete, and the general style of the writing so similar to the common hand of the prisoner's, that they did not deem it advisable to attempt to introduce it in evidence. We take the liberty to state, that Mr. Gould's opinion, to whom it has been submitted since the trial, is very strong that it is in the handwriting of Professor Webster; and that it bears stronger points of resemblance to his general style, than even the first letter subscribed with the signature Civis.

We copy also from a contemporary report of the trial, in the Boston Daily Bee, an account of Professor Webster's remarks to some friends in regard to his counsel's receiving the letter.—REP.

"At eleven o'clock [this was on Friday the 29th] a recess of fifteen minutes was granted, during which the friends of Professor Webster crowded around the dock, and engaged in earnest conversation with him. It finally took the form of a discussion, apparently between the prisoner and his friends, when officer Jones interfered and checked the proceeding. Professor Webster appeared to be very much excited and pleased by what had been communicated to him. He called officer Jones in a moment after, and said, very earnestly, 'Did you hear what they said of that letter?' 'No; what letter do you mean?' was the reply and query of the officer, in the same breath. 'Why, the "Civis" letter; they say they have received a letter, in the same handwriting, from the man who wrote it,' responded Professor Webster, with an air of triumph.

"The reporter would add that he has no knowledge of the receipt of any such letter. If one has been received, it will undoubtedly be introduced in argument."

ORDER OF LECTURES AT THE MEDICAL COLLEGE.

As it seems to have been assumed, rather than, as we believe, directly testified by any single witness during the trial, what was the order of Prof. Webster's lectures during the week, we subjoin the following card of the course. It will be seen that the Professor's hour was twelve o'clock on the four days, Tuesday, Wednesday, Thursday, and Friday.—REP.

HARVARD UNIVERSITY.

MASSACHUSETTS MEDICAL COLLEGE, NORTH GROVE STREET, BOSTON.

Lectures begin first Wednesday in November, annually.

Midwifery and Medical Jurisprudence,	W. CHANNING, M.D.
Materia Medica and Clinical Medicine,	J. BIGELOW, M.D.
Chemistry,	J. W. WEBSTER, M.D.
Theory and Practice of Physic,	J. WARE, M.D.
Pathological Anatomy,	J. B. S. JACKSON, M.D.
Anatomy and Physiology,	O. W. HOLMES, M.D.
Surgery,	H. J. BIGELOW, M.D.

Boston, Nov. 7th, 1849. OLIVER W. HOLMES, *Dean*.

ORDER OF LECTURES, DAILY.

Hour.	Monday.	Tuesday.	Wednesday.	Thursday.	Friday.	Saturday.
9 o'clock.	Bigelow, (Hospital.)	Ware.	Ware.	Bigelow, (Hospital.)	Ware.	Ware.
10 o'clock.		Bigelow.	Bigelow.		Channing.	Bigelow.
11 o'clock.	H. J. Bigelow.	Jackson.	H. J. Bigelow.	Channing.	H. J. Bigelow.	H. J. Bigelow, (Hospital.)
12 o'clock.	Channing.	Webster.	Webster.	Webster.	Webster.	
1 o'clock.	Holmes.	Holmes.	Holmes.	Holmes.	Holmes.	
4 o'clock.				Channing.		

PROCEEDINGS IN THE JURY ROOM.

The following communication, addressed to and published in the Boston Daily Evening Traveller of April 3d, gives an account of the proceedings in the jury-room, which will doubtless be interesting to many readers. It is understood to have proceeded from *Mr. Albert Day*, of the firm of *Daniel Kimball & Co.*—REP.

To the Editors of the Traveller:

GENTLEMEN: Having read in several papers what purported to be a relation of the scenes and events which transpired in the jury-room, on the trial of John W. Webster, I have felt desirous (now that the subject has been brought before the public mind) that a plain statement of the more important matters connected with the jury-room should be made, as it might prove interesting, if not instructive, to the community. The jury was composed of twelve men, from as many different branches of the mechanical and mercantile

"professions;" they were from four different religious denominations, and their ages varied from 28 to 66 years. They were men whom I should designate as possessing good sound common sense; — men capable of judging, of discerning, of appreciating evidence, and estimating its importance. The jurors, after they had become better acquainted with each other, and as the evidence began to bear with crushing weight upon the prisoner, and the "complicated net-work of circumstances" seemed to encircle him, felt strongly the need of "that wisdom which cometh from above," to guide and direct their minds aright, in their most momentous and responsible situation.

It was then that our worthy foreman — whom we all must highly respect, and whom we shall ever remember with pleasure — proposed to the jury, that they should have religious services every evening. The proposition was most cheerfully responded to; and, ever after that time, the voice of praise and prayer ascended, as we trust, from sincere hearts, to the throne of Infinite Wisdom and Mercy. I need not say that the burden of every prayer was for wisdom to guide and direct unto a right decision, and for blessings most rich and precious to descend upon the prisoner and his afflicted family.

I now come to the closing part of this momentous trial. When the witnesses for the defence had given in their testimony, and the counsel for the prisoner announced the evidence on their part closed, a feeling of pain and anguish must have come over the mind of every juror. "What! can no more be said, — no more be done in behalf of the unhappy prisoner? Is that the evidence, — the *only evidence*, — on which we are to place our verdict of *Not Guilty?*"

At that very time, with the light which the able charge of the Chief Justice afterwards gave us on several points of the law and the evidence, I think I speak the sentiments of nearly, if not quite, all the jury, when I say, that they were as fully prepared for their verdict, as they were when they retired to the jury-room, after listening to the most able and eloquent pleas of the prisoner's senior counsel and the Attorney General; so strongly, so fully, had the evidence pointed to the prisoner as the guilty man, AND TO NO ONE ELSE. After the jury had gone to their room, — with the various evidences of guilt spread out on the table before them, and the door locked upon them, shut out, as it were, entirely from the world, with nothing but the eye of the Omniscient God upon them, — so painful was the sense of responsibility, so unwilling were they to come to the result which all felt they must come to, that thirty to forty minutes were spent ere anything was done; when, at last, the voice of the foreman was heard calling them to order, and reminding them of their duty, however painful. And, when they had all taken their seats around the table, then it was that one of the jurors rose and said, "Mr. Foreman, before entering upon the further consideration and decision of this most important matter, I would propose that we seek for divine wisdom and guidance." The proposition met with a cordial response, and the foreman called upon a juror to

offer prayer. This was done, most feelingly and sincerely. We then proceeded to the most trying and painful part of our arduous duty. The various articles which were put into the case were examined by the jury, and particularly those things which seemed to bear most strongly against the prisoner. The final decision of the question was resolved into three parts: —

First, Are the remains of a human body, found in the Medical College, on the 30th of November, 1849, those of the late Dr. George Parkman?

Second, Did Dr. George Parkman come to his death by the hands of Dr. John W. Webster, in the Medical College, on the 23d of November, 1849?

Third, Is Dr. John W. Webster guilty, as set forth in the indictment, of the wilful murder of Dr. George Parkman?

When the vote on the first question was put, twelve hands arose immediately. Some little discussion then took place, when the second question was tested, and twelve hands at once arose. The third, — the most important question of all, — was next to be tried. Quite a pause ensued. One juror, in his sympathies of kindness for the prisoner, (who was his personal acquaintance or friend,) and his afflicted family, shrunk from the "fiery ordeal." "Can't we stop here? — can't the law be vindicated and justice satisfied, if we pause here? Must we take the *life* of the unhappy prisoner?" Some discussion ensued: the mind of the juror seemed more calm; and he expressed his readiness to vote on the *final* question, which was then put, and twelve hands arose. The die was cast, and John W. Webster was pronounced *Guilty of Murder*.

Thus ended the closing scene in the jury-room. What afterwards transpired in the court-room is already known to the public. When our foreman then pronounced that awful word — Guilty! the jury as well as the prisoner trembled and grew faint. And what a relief it was to us, when we were again allowed to go free and rejoin our families and friends, after so long and painful a separation! And there was not a juror's heart but would have leaped for joy, could the prisoner have been justly allowed the same unspeakable blessing.

ONE OF THE JURY.

Boston, April 3d, 1850.

OPINION OF MR. JUSTICE WILDE IN YORK'S CASE.

As allusion has been made in more than one instance during the course of the trial, particularly on pages 30 and 383, to the dissenting opinion of His Honor Mr. Justice Wilde, in the case of *Commonwealth* v. *York*, 9 Met. 93; and as very erroneous impressions seemed to have prevailed in this vicinity, (among legal gentlemen, even,) as to the grounds taken by His Honor

in that case, and as to the consistency of those grounds with the charge to the jury delivered by the Chief Justice, the Reporter deems it pertinent to subjoin the following summary of the law to be deduced from that dissenting opinion. It will be noticed that it makes the case of secret murder a special exception. The reader will also have noticed, from the opinion of the Court pronounced by Chief Justice Shaw at the law-hearing, that the bench in the present trial were unanimous upon all the questions of law arising out of any part of the case.—REP.

SUMMARY OF OPINION.

1. When the facts and circumstances of a homicide are proved to the jury, there is no legal presumption of malice; but that, as well as the killing, is to be determined by the jury from the evidence; and, if they doubt as to the malice, they cannot convict of murder.

2. If there be any presumption of malice from the proof of the killing by the prisoner, that presumption may be rebutted by evidence; and if, on the whole, the jury doubt as to the malice, they cannot convict of murder.

3. In case of a secret murder, where no provocation is proved, malice may be presumed.

ARRANGEMENTS FOR THE JURY TRIAL.

It seems deserving of passing mention to allude to the locality and arrangements for the conduct of the jury-trial.

Representations had been made through the public newspapers of the propriety and desirableness of a change of session from the ordinary place of holding the Court in the Supreme-Court room, to some place capable of containing a larger audience; and the Tremont Temple, and other large halls in the city, had been named. But the judges, being fully satisfied of the greater accommodations afforded by the Court House for many of the necessary purposes of the trial, gave little countenance to the suggestion; and Sheriff Eveleth accordingly made arrangements for the session there, which, it is believed, most successfully answered the purposes of justice, and at the same time satisfied, so far as practicable, the curiosity of the public. By barricading the usual entrance to the spectators' seats, and only granting admission to the gallery, and at the same time stationing a police force so as to effect a change of audience in the gallery every ten minutes, and then issuing cards of admission to the entrance on the inner side, a great degree of quiet was secured around the bench and jury-seats, and a large number outside the bar were enabled to catch a passing glance, at least, of the proceedings. With a comparatively small force, complete order

was thus preserved on the outside, with the exception of one or two tumultuous movements; while within, as it was computed by an estimate of the police, no less than fifty-five to sixty thousand persons had a view of the trial from the gallery. Perhaps within the bar, and upon the lower floor, where the audience was much more permanent, nearly as many more persons, including judges of other courts not in session, members of the legislature and the bar, members of the clerical and medical professions, and citizens of all ranks and occupations from the vicinity and a distance, were present at one time or another during the proceedings. The witnesses, who alone numbered nearly one hundred and fifty, were accommodated, during their exclusion from the Court room, in the neighboring grand jury room; while the reporters for the different newspapers, to the number of fifteen or twenty, were furnished with seats in the vicinity of the Sheriff's desk, serving as a means of communication to a vastly larger audience at a distance than that present before them.

It may be added, as a more material criticism upon the external appearance of the conduct of the trial, which the Reporter ventures to make on the representation of many persons of great experience in courts, that the proceedings wore an aspect of impressive solemnity from the outset, such as is seldom witnessed in a court of justice, even upon a capital trial. The audience seemed inspired with a feeling, emanating perhaps from the bench in the first instance, that the occasion was the scene of the exercise of the highest functions of human justice; and, whether those functions were well or ill performed, that they were discharged with a gravity and decorum of manner befitting the highest majesty of the law.

PROFESSOR WEBSTER'S INTERVIEW WITH MR. AND MRS. LITTLEFIELD, AFTER THE ISSUING OF THE WARRANT FOR EXECUTION.

We take from the Boston Daily Journal, of July 25th, the following account of an interview between Professor Webster and Mr. Littlefield, after the jury-trial had ended and the application for a commutation of sentence had failed. We have since verified its accuracy by personal inquiry of Mr. Littlefield and Mr. Jailer Andrews.—Rep.

"Yesterday afternoon, at the mutually expressed wish of both parties, Mr. Littlefield, the Janitor of the Medical College and principal witness for the Government on the trial of Professor Webster, visited the jail, and had an interview with the condemned man, in the presence of Mr. Andrews the jailer. As he went into the cell, Professor Webster greeted Mr. Littlefield with great cordiality, taking him by the hand, and told him that he had long been desi-

rous of seeing him, in order to make his acknowledgments to him. Professor Webster said he had done him (Littlefield) great injustice, and asked his forgiveness.

"Mr. Littlefield replied, 'I forgive you, Dr. Webster, with all my heart, and I pity and sympathize with you.' He told him that it was a painful thing to go on to the stand and testify against him, but that he felt it to be his duty, and he had no right to shrink from it. If he had testified to anything that was not strictly correct, it was not done intentionally by him; if he had, he asked his (Webster's) forgiveness.

"Professor Webster replied — '*Mr. Littlefield, all that you said was true. You have misrepresented nothing. But, as a dying man, I have no recollection in regard to the sledge hammer. I cannot bring my mind to bear on it.*'

"Professor Webster also requested an interview with Mr. Littlefield's wife, who will, we understand, visit him this afternoon.

"Both Professor Webster and Littlefield were much affected during the interview, and they parted with mutual good feeling."

In the interview with Mrs. Littlefield, on the next day, as we learn from her husband and Mr. Andrews, who were both present, Professor Webster used the following language,— originally reported in the Boston Daily Herald.—REP.

"'As to what I have said about your husband, there is no man placed in my situation but would have done the same as I have; but that is all settled between him and me. What you and your husband testified to on the trial was all true.'

"He made no reservation in regard to the 'sledge hammer.' It probably did not occur to him."

PROFESSOR WEBSTER'S DECLARATIONS TO MESSRS. ANDREWS AND EVELETH.

On the occasion of inquiring of Mr. Andrews relative to Mr. and Mrs. Littlefield's last interviews with Professor Webster, he furnished us with the following particulars of a conversation which he had with the Professor himself, on Sunday, August 25th, the Sunday preceding his execution.—REP.

The interview had been made one of special appointment on the Professor's part for some days before it took place. It occurred in the morning of the Sunday referred to. After some conversation relative to the approaching event of his execution, and his sense of Mr. Andrews's kindness to him, Dr. Webster requested of Mr. Andrews, as a favor, that he would prepare his person for the scaffold. Mr. A. replied that he was under the directions of the Sheriff; but,

if of any consequence to him, he would endeavor to comply with his request. All the arrangements relative to the execution, and the disposition of his body afterwards, were then discussed; the Professor, as usual, maintaining a remarkable composure, plainly wholly natural and unaffected.

This subject disposed of, Professor Webster then went on to say: "*Mr. Andrews, I consider this whole thing perfect justice! The officers of the law are right! Every body is right; and I am wrong! And I feel that if the yielding up of my life to the injured law will atone, even in part, for the crime I have committed, that it is a consolation!*"

Subsequently to the above interview, and two days before the execution, Sheriff Eveleth called upon the prisoner to prepare him for the final discharge of his official duty, and heard from him declarations very similar to those just reported.

The Sheriff, in the course of the conversation, in allusion to the suggestion that had been made of the possibility of suicide, remarked that he inferred from the Professor's statements that he entertained no idea of attempting to avoid the execution by any act of his own. "*Why should I?*" replied Professor Webster. "*All the proceedings in my case have been just! The Court discharged their duty! The law-officers of the Commonwealth did their duty, and no more! The verdict of the jury was just! The sentence of the Court was just; and it is just that I should die on the scaffold, in accordance with that sentence!*"

LAST HOURS AND EXECUTION OF PROFESSOR WEBSTER.

We compile from two of the newspapers of the day, the Boston Daily Evening Transcript and the Boston Daily Evening Traveller, some particulars of the last hours and execution of Prof. Webster, which we deem not inappropriate, in this connection, to the present volume. We have taken pains to verify the statements by a reference to eye-witnesses present at the scenes or interviews, and have made an occasional alteration for the sake of greater exactness.—Rep.

LAST INTERVIEW WITH HIS FAMILY.

Professor Webster was visited as usual by his family yesterday afternoon, and they remained with him nearly four hours. There is every reason to believe that they left entirely ignorant as to the day of the execution. The prisoner had felt great anxiety in regard to this closing interview, lest he should betray himself. When it was over, he felt greatly relieved, and spoke cheerfully. He had detected no sign of a recognition of the fact that this was their last

interview in the demeanor of his family: neither had the jailer. To the latter, as they left the cell, they addressed some remarks plainly indicating their expectation of re-visiting the prisoner. An immense crowd had assembled in Leverett street, and about the jail, to see the unhappy family as they went out; but Mr. Andrews took Mrs. Webster and her family through his own house to a door opening on Lowell street, where a carriage was waiting, and they thus escaped the scrutiny and remarks of the multitude.

One incident, which seemed to affect happily the spirits of the prisoner during the interview with his family, may be worthy of mention. For several months, they have been in the habit of reading the Bible to him in his cell, taking the chapters of the New Testament in regular course, without skipping. The chapter which thus came up yesterday, and was read, was that exultant and consoling chapter, the 15th in Paul's First Epistle to the Corinthians, in which occur the words: —

Now this I say, brethren, that flesh and blood cannot inherit the kingdom of God; neither doth corruption inherit incorruption.

Behold, I show you a mystery; we shall not all sleep, but we shall all be changed,

In a moment, in the twinkling of an eye, at the last trump; for the trumpet shall sound, and the dead shall be raised incorruptible, and we shall be changed.

For this corruptible must put on incorruption, and this mortal must put on immortality.

So when this corruptible shall have put on incorruption, and when this mortal shall have put on immortality, then shall be brought to pass the saying that is written, Death is swallowed up in victory.

O death, where is thy sting? O grave, where is thy victory?

The sting of death is sin; and the strength of sin is the law.

But thanks be to God, which giveth us the victory, through our Lord Jesus Christ.

The prisoner seemed much impressed by the coincidence, which had, without calculation on any one's part, given this chapter to be read at his last interview with his family, and on the last day of his earthly existence. He recurred to the incident, after the interview, with very obvious pleasure, and seemed to derive much hope and consolation from the inspired assurances of the apostle as to the resurrection of the dead, sown "in dishonor" and "in weakness."

During a great part of the day yesterday, the prisoner occupied himself with setting aside little memorials for those few friends, in whose charitable feelings towards him, when he was gone, he might hope. He selected a number of his books, and wrote in them the names of several persons, towards whom he wished to express some recollection of past obligations and favors. He seemed to take much interest in this occupation. Mr. Sohier, counsel for the prisoner, visited him during the day, and took leave of him.

Quite a number of applications have been made to see the prisoner during the last two weeks. Clergymen from various parts of the country have sought an interview; and he has received numerous letters of an admonitory or consoling nature. The interviews he has, in most instances, declined. The letters he has read. Indeed, throughout his imprisonment, he has kept up his interest in

outward affairs, although his thoughts have seemed to be mainly devoted to studies and meditations appropriate to his situation.

THE PRISONER'S LAST NIGHT.

The last interview of Dr. Putnam yesterday with the prisoner took place between half-past seven and nine o'clock last evening. Officers Jones and Leighton were present in the cell, by the sheriff's orders. Dr. Putnam wished more privacy, and the matter was finally compromised by dismissing the officers, and having Mr. Gustavus Andrews, the jailer, alone present. Of this interview we cannot say much. There was no confession contradictory of that already made by the prisoner. Professor Webster declared himself willing to die on the gallows, as "a partial expiation of the great wrong he had done to society."

His serenity, he said, was established on religious conviction. He alluded to the ceremony of his execution, and remarked that if he faltered, it would be through no fear of dying, through no effect upon him of the horrible surroundings and accompaniments of his doom, — but because of his misgivings as to the efficacy of his own repentance, and as to the future to which he was going, — because of the "clouds" that might come over his spirit at the last. He hoped, however, that he should bear up, — arranged that he should be pinioned by Mr. Andrews in preference to any other officers, — and said that he expected to be tranquil during the night, although he might not sleep.

He spoke often during the night of the morrow, and of the manner of his death, apparently with firmness. Dr. Putnam left him at nine o'clock. Afterwards, until about midnight, he conversed with his watchers, his conversation being principally of a religious character. At midnight, he fell into a sort of doze, but did not seem to sleep heavily. He would awake, converse, and fall to sleep again. The usual sounds of returning day seemed to agitate him; but he soon recovered his composure, and, when the watchers left, he was perfectly calm.

THE EXECUTION.

The scaffold was not erected until after daylight this morning. It was placed in the centre of the yard, visible from the rear of Lowell street, and the houses on the west side of Leverett street. A change had been made in its construction, a spring having been substituted to cause the falling of the drop upon which the condemned stands, instead of the cutting of a rope.

At an early hour this morning, those persons who had been furnished with passes began to assemble in the jail yard. They numbered about one hundred and fifty, of whom some fifteen or twenty were representatives of the press. The constables, police officers, and other city officers, to the number of about one hundred and twenty-five, kept order within and without the walls of the jail.

The prisoner partook of a slight breakfast, and at a quarter before eight was visited by Dr. Putnam and Mr. Andrews, the jailer.

The arrangements for the execution had all been explained at a previous interview. Dr. Putnam having spent an hour or more with him in religious conversation and devotional exercises, at Dr. Webster's request, Sheriff Eveleth and the officers of the jail were then sent for. When they entered, he thanked them, as he had previously Mr. Andrews, in warm terms for their many kind attentions, and for their considerate conduct during his long confinement.

At a quarter past nine, the legal witnesses of the execution, headed by the sheriff and his deputies, and followed by the spectators generally, then entered the archway of the jail, to the prisoner's cell, where a short but fervent prayer was offered by Rev. Dr. Putnam.

He prayed for a brother now about to pass from this life of sin; to be removed from this world to another. He invoked for him the aids of the Holy Spirit, and prayed that his repentance might be accepted, and be accounted to him as such in the sight of the Searcher of all hearts. He prayed that the humble hope of forgiveness that the prisoner had been permitted to entertain, might be realized in a blissful fruition. He also prayed for those who had been bereaved by the transgressions of the condemned man; for the ministers of the law, who, while they performed their bounden duty, did it with mercy and tenderness; that the memories and admonishments of this hour might be sanctified to all who stood before God, mortal, and soon to die. "We commit," he said, "Thy child to Thee; and while he bows himself to the law, behold him an humble suppliant at the throne of Him who tempereth justice with mercy, and receiveth the contrite heart! Open the doors of Thy mansion, that he may enter! Do more and better for him than we can ask or think!"

At the conclusion of this prayer, the spectators retired from the arch. The arms of the condemned were pinioned to his side, and the procession marched to the scaffold. By the side of the condemned was his faithful religious counsellor and adviser, who had promised to accompany him, and be present at the parting scene. No sign of faltering could be observed as he ascended the steps. He appeared subdued, as one conscious of having committed a great sin, for which he was about to suffer.

As he stepped upon the drop, he looked round for his faithful friend, Dr. Putnam, who was by his side, and entered into an apparently earnest conversation with him. At almost every word Dr. Webster bowed his head, as if what he was saying was emphatically the outpouring of his heart.

Deputy-Sheriff Coburn called the attention of the witnesses, &c., to the reading of the Executive death-warrant, which was next done in an audible manner by the Sheriff, — who, with his officers and the assembly, generally remained with uncovered heads during the reading, with the exception of the prisoner.

At the conclusion of the reading of the warrant, Dr. Webster shook hands with Dr. Putnam, who took of him a final farewell.

He was then placed in a chair to have his legs pinioned. After

this was done, he again stood up. The touch of the rope upon his neck caused his face, which had been before of a deadly pallor, to flush, and there were evident signs of a subdued but still powerful agitation. He then shook hands with the Sheriff, and spoke a few words to him.

The black cap was then placed over his face, and the light of day thus shut out from him in this world forever. The Sheriff then turned to the assembled spectators, and in a loud voice proclaimed that in the name and by the command of the Commonwealth of Massachusetts, he should now proceed to do execution upon the body of John W. Webster.

At this knell of death, there was no motion of the body of the condemned, the features of the face being entirely hid from view; but he stood perfectly still, awaiting the fatal plunge.

After concluding his proclamation, the Sheriff turned round, and pressing a spring, the drop fell, and the prisoner's mortal career was at an end. This took place at twenty-five minutes before ten o'clock. The body swayed slightly to and fro; and, in a few seconds after the fall, there was a spasmodic drawing-up of the legs, once or twice. Beyond this there was no observable struggle.

After hanging thirty minutes, the body was examined by Dr. Henry G. Clark, City Physician, and by Dr. Charles H. Stedman, of the Lunatic Hospital, South Boston; and they informed the Sheriff that life was extinct.

The Sheriff then announced that fact to the assembly; and, after thanking the witnesses for their attendance, dismissed them from further service.

LETTER FROM PROF. WEBSTER TO REV. FRANCIS PARKMAN, S.T.D.

The following letter was intrusted by Prof. Webster, before his execution, to the Rev. Dr. Putnam, and by him communicated for publication to the Boston Daily Evening Transcript, immediately after the execution. It was published only after consent obtained from the reverend gentleman to whom it was addressed.—Rep.

Boston, August 6, 1850.

Rev. Dr. Parkman:

Dear Sir,—I cannot leave this world in the peace of mind for which I pray, without addressing you, as the head of that family which I have so deeply injured and afflicted, to make known to you and them the bitter anguish of soul, the sincere contrition and penitence, I have felt at having been the cause of the affliction under which you and they have been called to mourn. I can offer no excuse for my wicked and fatal ebullition of passion but what you already know, nor would I attempt to palliate it.

I had never, until the two or three last interviews with your brother, felt towards him anything but gratitude for his many acts of kindness and friendship. That I should have allowed the feelings excited on those occasions to have overpowered me so as to involve the life of your brother and my own temporal and eternal welfare, I can, even now, hardly realize.

I may not receive from you forgiveness in this world, yet I cannot but hope and believe you will think of me with compassion, and remember me in your prayers to Him who will not turn away from the humble and repentant. Had I many lives, with what joy would I lay them all down, could I in the least atone for the injury I have done or alleviate the affliction I have caused! but I can now only pray for forgiveness for myself and for every consolation and blessing upon every member of your family.

In justice to those dearest to me, I beg to assure you, and I entreat you to believe me, no one of my family had the slightest doubt of my entire innocence up to the moment when the contrary was communicated to them by Dr. Putnam. That they have your sincere pity and sympathy, I feel assured.

There is no family towards every member of which I have always felt a greater degree of respect and regard than that of which you are now the head. From more than one I have received repeated acts of friendship and kindness, for which I have ever been and am most truly grateful.

Towards yourself, in particular, have not only my own feelings been those of the most sincere regard and gratitude, but every individual of my family has felt towards you that you were their pastor and friend. Often has my wife recalled the interest you took in her from her first becoming your parishioner, and often has she spoken, with feelings of deep gratitude, of the influence of your public ministrations and of your private instructions and conversations, and of your direction of her inquiries and reading in what related to her religious views. These she has often recalled and referred to, as having firmly established the religious faith and trust which are now such sources of consolation and support to her and our children, as well as to myself.

Nothing that has occurred has weakened these feelings; and, although those I leave behind me may not meet you without the keenest anguish, I trust you will exonerate them from any participation in, or knowledge of, their father's sin, up to the moment I have mentioned. And may you remember them in your prayers to the Father of the fatherless and the widow's God!

I beg you, my dear sir, to consider this strictly a private letter, and by no means to give it publicity; at the same time, I will request you to make known to the immediate members of your family the state of my feelings and my contrition.

That every consolation and blessing may be vouchsafed to yourself and to every member of your family, is the heartfelt prayer of

Yours, most respectfully,

J. W. WEBSTER.

PROFESSOR WEBSTER'S RELATIONS TO HIS COUNSEL.

Just as the last sheets of the Appendix were going through the press, the Reporter learning, for the first time, that Professor Webster had made a formal apology to Messrs. Merrick and Sohier for the expressions used by him in his address to the jury, relative to their conduct of his defence, and had committed to writing his acknowledgment of gratitude for their arduous and faithful services in his behalf, — a matter which every one acquainted with the subsequent connection of the counsel and client had of course supposed that the Professor had satisfactorily explained in personal intercourse, — obtained from those gentlemen, after some reluctance, copies of those letters; — or rather, in the instance of Mr. Sohier, an extract from such a letter; the same letter containing allusions to other matters which Mr. Sohier did not feel at liberty to communicate. The Reporter deems it an act no less of favor to the memory of the deceased, than of justice to his professional associates, to improve the present opportunity of giving publicity to these communications.

Boston, July 18th, 1850.

Hon. PLINY MERRICK:

Dear Sir, — I have long felt that I owe you an apology for the expressions that escaped me in a moment of intense excitement and distress. I have ever been aware that nothing was omitted or overlooked by my counsel, that would in any way serve my cause, and that you took the deepest interest, and were indefatigable in my behalf. Although I have not adhered to your last advice, I trust you will approve of the course that has since been taken.

In the hope that you will pardon me for any expression of impatience or disappointment, and accept my sincere gratitude and thanks for your exertions in my behalf,—

I am, respectfully and truly,
Your grateful friend,
J. W. WEBSTER.

Boston, July 19, 1850.

My Dear Sir: — Will you have the kindness to hand the inclosed to Judge M.?

* * * * * * * * * * *

I would write you a long letter of thanks for all the interest you have taken in my case, did I think it necessary. Whatever I may have said, under my great distress and anxiety, that was in the least painful or unpleasant to you, I know you will forgive. And I assure you that I always felt that you were doing everything in your power for me. * * * * * * * *

Gratefully yours,
J. W. WEBSTER.

EDWARD D. SOHIER, *Esq.*

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